

**INTERPRETATION OF VICTIM STATUS IN CLIMATE CRISIS
CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS**

by

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Koç University

Graduate School of Social Sciences and Humanities

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ABSTRACT

INTERPRETATION OF VICTIM STATUS IN CLIMATE CRISIS CASES BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

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The thesis examines the evolving interpretation approach of the European Court of Human Rights (ECtHR) to individual applicants' victim status especially in climate crisis cases. It comprehensively analyses the requirement of victimhood under Article 34 of the European Convention on Human Rights (ECHR). First, it delves into key national, regional, and international decisions where victimhood was a disputable matter before the court and examines the approach of the relevant judicial body. Then it thoroughly examines the determining factors for victimhood as an admissibility criterion before the ECtHR in general and in environmental cases to lay the ground for understanding the Court's approach in climate cases. Next, the approach of the ECtHR is assessed for cases where human rights violation was alleged due to climate change. Focusing on the discussion of the three Grand Chamber decisions, it aims to explore the cautious yet evolving approach of the ECtHR in interpreting the victim status for individual applications. Finally, the thesis contributes to the growing field of climate change and human rights litigation examining the interpretation method of ECtHR on climate cases and provides an overall view of how human rights bodies are addressing this complex issue.

Keywords: *European Court of Human Rights (ECtHR), Climate change, Victim status, Art. 34 ECHR, Climate litigation, Interpretation approach.*

ÖZETÇE

AVRUPA İNSAN HAKLARI MAHKEMESİ ÖNÜNDE İKLİM KRİZİ VAKALARINDA MAĞDUR DURUMUNUN YORUMLANMASI

Farzana Faiza

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Tez, Avrupa İnsan hakları Mahkemesi'nin (AİHM) özellikle iklim krizi vakalarında bireysel başvuru sahiplerinin mağdur statüsüne yönelik gelişen yorum yaklaşımını incelemektedir. Avrupa İnsan hakları Sözleşmesi'nin (AİHM) 34. Maddesi uyarınca mağduriyet gerekliliğini kapsamlı bir şekilde analiz eder. İlk olarak, mağduriyetin mahkeme nezdinde tartışmalı bir konu olduğu kilit ulusal, bölgesel ve uluslararası kararları ele alır ve ilgili yargı organının yaklaşımını inceler. Ardından, iklim davalarında Mahkemenin yaklaşımının anlaşılmasına zemin hazırlamak için genel olarak AİHM nezdinde ve çevre davalarında kabul edilebilirlik kriteri olarak mağduriyetin belirleyici faktörlerini kapsamlı bir şekilde inceler. Daha sonra, AİHM'nin yaklaşımını, iklim değişikliği nedeniyle insan hakları ihlalinin iddia edildiği durumlar için değerlendirilmektedir. Üç Büyük Daire kararının tartışılmasına odaklanarak, bireysel başvurular için mağdur statüsünün yorumlanmasında AİHM'nin temkinli ancak gelişen yaklaşımını araştırmayı amaçlamaktadır. Son olarak Tez, AİHM'nin iklim davalarına ilişkin yorumlama yöntemini inceleyerek artan iklim değişikliği ve insan hakları davaları alanına katkıda bulunmakta ve insan hakları organlarının bu karmaşık konuyu nasıl ele aldıklarına dair genel bir görüş sunmaktadır.

Anahtar Kelimeler: *Avrupa İnsan Hakları Mahkemesi (AİHM), İklim değişikliği, Mağdur statüsü, Mad. 34 AİHS, İklim davası, Yorumlama yaklaşımı.*

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LIST OF ABBREVIATIONS AND ACRONYMS

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and Peoples' Rights
ACHPR	African Commission on Human and Peoples' Rights
ACtHPR	African Court on Human and Peoples' Rights
ACtJHR	African Court of Justice and Human Rights
AO	Advisory Opinion
AU	African Union
CJEU	Court of Justice of the European Union
CoE	Council of Europe
CoM	Committee of Ministers
CRC	Convention on the Rights of the Child
DETEC	Federal Council, the Federal Department of the Environment, Transport, Energy and Communications
EC	European Commission
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Right
EPA	Environmental Protection Agency
EJA	Environmental Justice Australia
FAC	Federal Administrative Court

FIE	Friends of the Irish Environment
FSC	Federal Supreme Court
GC	Grand Chamber
GHG	Greenhouse gas
HUDOC	Human Rights Documentation
HRC	Human Rights Council
HRCttee	Human Rights Committee
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
MEPA	Montana Environmental Policy Act
NGO	Non-profit Organization
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
SFC	Swiss Federal Council
USA	United States of America
UN	United Nations
UNGA	United Nations General Assembly

Chapter 1

INTRODUCTION

1.1 Background

Over the past 50 years, there has been a growing concern about climate change's impending and adverse effects. Anthropogenic activities, including burning fossil fuels, deforestation, increased livestock rearing, and using chemical fertilizers, among others, accelerate the process of negative environmental changes.¹ In 1972, the Stockholm Declaration² was adopted at the first World Conference on the Environment where representatives from various United Nations Member States discussed climate change as a 'major issue'³ for the first time. The world was warned of the likelihood of the disastrous effects of climate change that would jeopardize the lives of future generations. Nonetheless, we are already facing the consequences of this phenomenon. Temperature increase, the rise of sea level, melting of glaciers, frequent natural disasters, changes in the ecosystem, etc. are the major repercussions that are changing the course of our life adversely affecting our lifestyle.

The gradual change in the environment is also threatening the enjoyment of our rights as a human being. In its annual report⁴ released in 2009, the Office of the United Nations High Commissioner for Human Rights (OHCHR) studied the connection between climate change

¹ See Causes of climate change, EUROPEAN COMMISSION, https://climate.ec.europa.eu/climate-change/causes-climate-change_en (last visited Oct 20, 2024); The 7 human activities that cause climate change, CONCERN WORLDWIDE, <https://concernusa.org/news/human-activities-that-cause-climate-change/> (last visited Oct 20, 2024).

² Declaration of the United Nations Conference on the Human Environment, June 16, 1972, U.N. Doc. A/CONF.48/14/Rev.1 (1973).

³ United Nations, *United Nations Conference on the Human Environment, Stockholm 1972*, UNITED NATIONS, <https://www.un.org/en/conferences/environment/stockholm1972> (last visited Oct 20, 2024).

⁴ Office of the U.N. High Commissioner for Human Rights, Report on the Relationship Between Climate Change and Human Rights, U.N. Doc. A/HRC/10/61 (Jan. 15, 2009).

and human rights for the first time.⁵ It concluded that ‘climate change-related impacts, have a range of implications for the effective enjoyment of human rights’.⁶ It added that the effects may be both direct and indirect on human rights.⁷ Several human rights, including those to life, water and sanitation, food, health, housing, self-determination, culture, and development, are in danger due to climate change.⁸ International, regional, and national authorities have started to acknowledge the relation between climate change and human rights violation often urging states to take action holding them accountable.

There has been a gradual trend toward using national, regional, and international human rights enforcement mechanisms to address the consequences of climate change.⁹ In the beginning, claimants would base their claims on environmental issues in general, which has shifted to directly claiming human rights violations due to climate change. Flagged as the right to a healthy environment, climate activists are taking a rights-based approach by incorporating several human rights including the right to life, the right to property and private life, the right to be free from torture or inhuman treatment, etc. to bring their allegations against states and private authorities.¹⁰ This puts the judicial institutions in the dilemma of ensuring justice while balancing the contradictory interests of the state and its citizens.

⁵ John H Knox, *Linking Human Rights and Climate Change at the United Nations*, 33 HARV. ENVTL. L. REV. 477 (2009).

⁶ *Supra* note 4 at 29.

⁷ *Id.*

⁸ OHCHR and climate change, OHCHR, <https://www.ohchr.org/en/climate-change> (last visited Oct 20, 2024).

⁹ César Rodríguez-Garavito, , *in* LITIGATING THE CLIMATE EMERGENCY: HOW HUMAN RIGHTS, COURTS, AND LEGAL MOBILIZATION CAN BOLSTER CLIMATE ACTION (2022); Maiko Meguro, *Litigating Climate Change through International Law: Obligations Strategy and Rights Strategy*, 33 LEIDEN JOURNAL OF INTERNATIONAL LAW 933 (2020); Agnes Viktoria Rydberg, *Climate Change Litigation: General Perspectives and Emerging Trends*, 26 INT. COMMUNITY LAW REV. 347 (2024).

¹⁰ *Id.*

The commencement of climate litigation can be traced back to the late 1980s in the United States.¹¹ From then on, the number of cases began to increase, which then soared after the Paris Agreement¹² in 2015¹³. According to the Sabin Center's Climate Change Litigation Database, as of June 2024, there have been 2666 climate related cases worldwide.¹⁴ 233 of the cases were filed only in 2023.¹⁵ The United States has the highest number of cases from national jurisdictions, while the remaining are from other jurisdictions, including regional or international courts, tribunals, quasi-judicial bodies, and other adjudicative bodies.¹⁶ In addition to cases before the regional and international bodies, climate change cases have been submitted in at least 55 countries.¹⁷ Distinct approaches from these jurisdictions on the principles and interpretation concerning climate change carve out a path for climate justice.

The European Court of Human Rights (ECtHR) plays a crucial role in upholding human rights within the Council of Europe (CoE). Established under the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR)¹⁸, the ECtHR acts as the principal judicial organ for its enforcement. It oversees cases brought by individuals and states claiming human rights violations by the Member States through the interpretation and application of the provisions of the Convention. As climate change becomes more prevalent, the number of litigations before the ECtHR is increasing holding the states liable for their role in climate change and human rights violation.

¹¹ Joana Setzer et al., *Climate Change Litigation and Central Banks*, 21 EUROPEAN CENTRAL BANK LEGAL WORKING PAPER SERIES (2021).

¹² Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

¹³ Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot*, Grantham Rsch. Inst. on Climate Change & Env't, London Sch. of Econ. & Pol. Sci. (2024).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221. [hereinafter ECHR]

When an applicant claims the violation of his or her human rights under the Convention, he or she needs to fulfil several admissibility criteria (*see 3.1 admissibility criteria and victim status, pp 37-41*). To be heard on the merits of the case, apart from traditional requirements, climate litigants need to substantiate their claim on the context of climate change which is a comparatively new concept before the ECtHR. Among those procedural and substantive conditions, one of the significant criteria is the victimhood of the applicants. It requires them to provide a connection between their alleged violations of human rights and the State's failure to protect the rights caused by climate change. Furthermore, they need to provide evidence that they were personally and directly or indirectly affected by the alleged violation.

Proving the victim status of the applicants is relatively tricky because of the complicated nature of climate change. On the other hand, it works as a notable doorway for the application to reach the next stage of the proceeding. Thus, it is one of the crucial elements of the admissibility criteria for general as well as climate-induced human rights violation claims. Through traditional interpretation methods, it might be challenging to address the special issue of long-term environmental effects on human rights. Nevertheless, in the emerging trend of climate litigation with a right-based approach, it is quite necessary to examine the concept from a progressing perspective.

1.2 Problem Statement and Research Question

The European Court of Human Rights has not seen many cases exclusively based on human rights violations due to climate change. The first case¹⁹ was filed in 2020, around four years ago. Regarding the cases before the ECtHR, several issues are raised for interpretation by the court. Among those, the understanding of the victim status of the applicants is quite contentious. As climate change has global effects, the traditional approach to determining the victimhood or victim status of the applicants may not effectively address human rights violations. In April 2024, the Grand Chamber of the ECtHR decided on three climate change

¹⁹ *Duarte Agostinho and Others v. Portugal and Others*, App. No. 39371/20, Eur. Ct. H. R., GC Decision on the Admissibility (2024).

cases,²⁰ two of which were inadmissible because of the applicants' inability to fulfil the victim status requirement. Although there are summary decisions in the single judge and committee judicial formations, (see 4.2 *Single Judge and Committee Decisions*, pp 63-65) the reasoning was not detailed. The Grand Chamber decisions mark the first-ever detailed decisions on climate cases. This represents the inadequate precedence of climate cases before the ECtHR to give us a clear understanding of the contentious concepts.

Historically, the ECtHR requires that the applicant shows solid evidence of being affected by the violation directly or indirectly on a personal level.²¹ This requirement is a result of the individualized nature of human rights protection under the European Convention on Human Rights. To demonstrate how one has been affected by an alleged violation of any rights protected under the Convention, there are clear standards established through the decisions of the Court. However, climate change has wide-ranging effects and can make it challenging to determine victim status in these cases. The effects might be often collective on a specific group of people and not directly affecting them. It also may not manifest immediately making the applicant to be unable to provide solid evidence to prove their claim. Hence, the traditional approach to victim status which is determined through the 'sufficient link' has difficulty addressing the relatively complex context of climate change.

Furthermore, the distinct approach of different national and international jurisdictions has made this controversy intricate. Although some jurisdictions have taken quite flexible approaches to interpreting this issue, the stance of the ECtHR is still not established due to its lack of sufficient judgments on the topic. The ECtHR is regarded as one of the oldest functioning human rights courts and the most impactful as it has jurisdiction over 46 European countries. It has a prominent role in setting the human rights standards in these countries. The decisions of ECtHR not only influence the human rights jurisprudence in its

²⁰ *Id.*; *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20, Eur. Ct. H. R., GC Judgment (2024); *Carême v. France*, App. No. 7189/21, Eur. Ct. H. R., GC Decision on the Admissibility (2024).

²¹ See *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, Eur. Ct. H. R., Judgment, ¶ 47 (2013); *Tauira and Others v. France*, App. No. 28204/95, Commission Decision of 4 December 1995, DR 83-B, at 130.

member states but also contribute to forming international legal standards. Therefore, how the ECtHR addresses this complex issue of human rights violations related to climate change, the principles and interpretation methods it employs, and its flexibility can contribute to the further development of climate litigation, in both Europe and other regions.

Faced with these complexities, this thesis aims to critically analyse and investigate the interpretation and application of the concept of victim status by the European Court of Human Rights in the context of climate crisis cases. The central research question guiding this thesis is: *How is the approach of the European Court of Human Rights in interpreting and applying the concept of victim status in climate change cases brought under an individual application?* To address this question, the thesis will discuss the following points. First, it will undertake a comparative examination of the approach that national, regional, and international human rights systems have taken to deal with similar issues. Since the issue is relatively new, taking reference from domestic, other regional, and international jurisdictions will assist the development of climate-related cases in the future for ECHR jurisdiction as well.

Then the thesis will move onto its core part, which is the examination of the legal factors, tests, and requirements to identify the basic guidelines for the interpretation of victim status for individual applicants before the ECtHR. It will attempt to analyse the traditional case laws defining victim status as well as several impactful environmental cases under the ECtHR. It will also examine the legal and practical barriers faced by the applicants in these cases to demonstrate their victimhood. Lastly, the focal issue of this thesis will be discussed in detail. To understand the research question, the three Grand Chamber judgments and decisions will be critically analysed in detail and the potential development of the ECtHR's interpretation of victim status for future climate cases and the essence of the need for a flexible approach will be discussed.

1.3 Scope and Limitation

The core objective of this thesis is to define and explain the meaning of ‘victim status’ in the practice of the European Court of Human Rights in relation to environmental and climate change cases. It focuses on examining case laws within the ECtHR’s framework to identify the court’s traditional and modern approach to interpreting victim status. It also discusses many substantial climate-related cases at the national, regional, and international levels.

Apart from case laws from different jurisdictions, scholarly commentary and legal doctrines were also discussed solely focused on the interpretation of victimhood and climate change. The thesis does not examine other admissibility requirements for an application. Moreover, it does not consider the Court’s approach to examining the scope of the specific rights or violation of the rights under the Convention. It solely focuses on the applications brought under individual applications under Article 34 of the Convention.

When examining the national cases, importance has been given to those that have the most impactful decisions in the development of climate jurisprudence and interpretation of the victimhood of the applicants. Reference has been made regarding the applicants’ successes and failures highlighting the diverse ways the courts interpreted victimhood. The emphasis has been mostly on the national jurisdictions within the European Union region. This is because all EU member states are signatories to the European Convention on Human Rights, and their approaches to specific issues can influence how the European Court of Human Rights interprets a particular issue. For instance, the ECtHR considers the concept of European consensus while interpreting contemporary matters. That is why, the cases in the national courts that have elaborately analysed victimhood in a climate case or the issue of victimhood playing a significant role in coming to a decision have been emphasized.

Similar conditions have also been adopted in cases from the regional and international human rights organs. As only a few climate cases have been presented before the ECtHR, an examination of different jurisdictions would provide a better understanding from different perspectives. Although the evaluation of other jurisdictions is provided, it is not exhaustive to the interpretation of all concepts. The selection of all the cases is based only on the criterion

of interpretation of the concept of victimhood, i.e., when and in which circumstances the applicants can be recognized as victims.

Similarly, cases from the ECtHR jurisdiction have been analysed that provide the general principles regarding the determination of victimhood of applicants as well as in environmental cases. These cases have not been discussed in detail, only limited to the examination of the Court's approach to the interpretation of victim status in different circumstances. The same limitation also applies to the examination of the three Grand Chamber cases before the ECtHR. However, compared to other ECtHR cases, these three cases are more detailed to emphasize the importance of their effects.

Due to the evolving nature of the jurisprudence of the interpretation of victim status in climate cases, the conclusions drawn from this research should be re-evaluated in the event of new decisions from the pending cases. Climate litigation has an interdisciplinary nature, which also encompasses scientific, and socio-political aspects. These will not be examined in detail, except for the legal implications of the interpretation. Case law and data used in the research are limited only to materials existing up to October 2024 and therefore occurrences after this date will not be taken into consideration.

1.4 Research Methodology

The thesis integrates doctrinal research methodology. Focusing on understanding the interpretation of victimhood, the research was conducted by analysing different academic sources such as journal articles, opinions of scholars on the issue, and publications of the CoE, ECHR, and other relevant organizations. Since it aims to find out the interpretation approach of the European Court of Human Rights (ECtHR) for climate change cases in the present and potential cases in the future, cases from the European human rights system, especially brought under the European Convention on Human Rights are the basis of it.

A comparative analysis of climate cases from the national, regional, and international human rights systems has been done, to gain a deeper insight into the court's approach in future climate cases. Related scholarly articles and journals, books, publications, news articles, blog

posts, and opinions on the judgments by lawyers, practitioners, and academicians have been examined to seek the intricate interconnection between human rights protection and the effects of climate change.

While choosing academic sources such as journals, articles, opinions of legal practitioners, and publications, literature incorporating the interpretation of victimhood under the ECtHR was the common determining criterion. These sources revolve around the approach of the Court by criticizing the method taken, often adding input on the topic. While selecting cases from different jurisdictions for analysis, the criterion chosen was the cases where applicants alleged human rights violations related to climate change.

The thesis commences with the climate cases brought by individual and association applicants from various national jurisdictions having a significant impact on the literature of interpretation of victimhood or victim status of the applicants. Cases from several national courts have been discussed. These decisions have provided some of the most nuanced analyses of victim status in climate litigation having a domino effect on the evolution of climate law in other countries. Such rulings presented useful guidance that may help the ECtHR in other future climate cases. The same logic applies to cases chosen from the UN human rights system and the Inter-American human rights system, where emerging frameworks of victimhood today influence the development of international law on the matter.

The core of this thesis involves an evaluation of the cases that contain foundational decisions on determining victim status before the ECtHR. In this regard, the research centres on key cases, where the Court has laid down the requirements for direct, indirect, or potential victim status. Particular emphasis is placed on the latest Grand Chamber judgments in climate cases, which are analysed to evaluate the ECtHR's current approach for interpreting the issue, identify any emerging trends, and consider the future of climate litigation under ECHR. This analysis is further amplified by a comparative understanding of how the Court implements these notions and how much leeway it gives to the flexible interpretation of victim status, particularly within the context of contemporary pressing issues such as climate change.

1.5 Thesis Structure

The thesis consists of five chapters in total. The first chapter begins with the background of the research. It summarizes the history of climate litigation and its current global situation. It then delves into the specific research problem that will be examined throughout the rest of the thesis. The chapter also outlines the scope of the research area and its limitations. Finally, it discusses the methodology applied by the author to understand the research question and find answers. How the data for the thesis was collected, which data, the reason for the selection, and the analytical approach are also discussed.

The overview of the legal problem of establishing the status of a victim in different jurisdictions is presented in the second chapter. It includes climate cases from national constitutional courts, regional human rights bodies, and the international human rights system. It provides a comparative analysis of the interpretation of the concept of victimhood from these judicial bodies. It starts with the general concept of victimhood and its significance for access to justice in climate cases. Then cases brought by several types of applicants are discussed on national levels to have an overall understanding of their approach. It delves into a summarized discussion of the constitutional courts' approach. After that, the communications and advisory opinions before the American human rights system are discussed. Although the African system has not received any application yet, the constitution and possible outcomes from its structure inferring a flexible human rights system are examined. Finally, petitions before the UN human rights system involving climate change are analysed extensively to scrutinize the comparatively flexible approach.

The third chapter starts with a general discussion of the admissibility criteria before the ECtHR for individual applications, including a brief examination of the substantive, procedural, and merit-based criteria. It then justifies the importance of victim status as one of the admissibility requirements before the court. After that, it explains how victim status is understood within the of the European Convention on Human Rights' framework. Article 34 of the Convention is analysed to highlight the obligations regarding the determination of the status of a victim. This chapter also provides a concise discussion of who is considered a victim. Furthermore, it analyses significant cases under ECHR jurisdiction which has established the requirement and circumstances where the Court accepted victim status of

direct, indirect, and potential victims in general. Then the flexible approach of the Court interpreting environmental cases, and the admissibility of victims are discussed for each type of victims through substantial case references. Lastly, it examines how representation on behalf of victims works and how legal standing especially for association applicants is interpreted under the Convention.

Chapter four solely focuses on the climate change cases before the European Court of Human Rights. It begins with a brief examination of the three inadmissible decisions before the Court's Single Judge and Committee formation. However, the central feature of this chapter is the recently delivered three decisions/judgments by the Grand Chamber of the ECtHR. First, the cases of Swiss women, French, and Portuguese youths are analysed in detail to provide a clear approach to the Court's interpretation. It examines the standard followed by the ECtHR to decide these cases on the issues of victim status of individual applicants, locus standi of association applicants, loss of victim status, and extraterritorial jurisdiction in the context of climate change. A critical evaluation of the Court's approach is made after analysing the cases. Whether the ECtHR was flexible or rigid in its interpretation of these cases is investigated. It also explores the possibility of a different outcome in cases where the Court took a comparatively flexible approach.

Chapter five summarizes the analysis conducted throughout the thesis. It discusses how the decisions of the Grand Chamber might affect future cases before the ECtHR, the ample possibilities and challenges awaiting future applicants, and how the Court may navigate old and contemporary issues in the evolving context of climate change. It further discusses the general scenario of climate litigation before ECtHR and provides a future direction for research.

Chapter 2

CONTENTIOUS NATURE OF VICTIMHOOD FOR CLIMATE LITIGANTS

2.1 Concept of Victimhood

Etymologically, the word victim comes from the Latin word ‘*victima*’ which refers to a ‘sacrificial offering’ in the first sense.²² The original denotation has progressed to a more general meaning over time. The word ‘victim’ is used in everyday life. Be it in the social, philosophical, or legal sphere, academics use the term with various connotations. Whenever someone feels aggrieved, suffers unfair treatment, or gets tricked, they refer to themselves as victims. The word is used in multiple disciplines; anyone can be a victim of almost anything.²³ It is commonly used to ‘designate anyone who suffers a negative outcome or any kind of loss, harm, or injury, whether the harm is material, physical or psychological.’²⁴

Therefore, there can be ‘victims of crime, war, accident, disease, poverty, injustice, oppression, discrimination, natural calamity, etc.’²⁵ Cambridge Dictionary defines a victim as ‘someone or something that has been hurt, damaged, or killed or has suffered, either

²² Keywords Project | Victim,

https://www.keywords.pitt.edu/keywords_defined/victim.html#:~:text=The%20etymology%20of%20victim%20is,thus%20the%20victim%20as%20Christ (last visited Oct 29, 2024).

²³ James E. Bayley, *The Concept of Victimhood*, in TO BE A VICTIM 53 (Diane Sank & David I. Caplan eds., 1991), http://link.springer.com/10.1007/978-1-4899-5974-4_4 (last visited Oct 29, 2024).

²⁴ EZZAT A. FATTAH, CRIMINOLOGY: PAST, PRESENT AND FUTURE (1997), <http://link.springer.com/10.1007/978-1-349-25838-3>. Cited in Heidy Robouts & Stef Vandeginste, *Reparations for Victims of Gross and Systematic Human Rights Violations: The Notion of Victim*, 16, Article 5 THIRD WORLD LEGAL STUDIES 89 (2003), <http://scholar.valpo.edu/twls/vol16/iss1/5> (last visited Oct 29, 2024). at 89.

²⁵ *Id.*

because of the actions of someone or something else, or because of illness or chance'.²⁶ There is no uniform legal definition of victim, as it depends on the jurisdiction and specific legal context.

The concept of 'victimhood' stems from the idea of a victim. As they are linked, understanding both topics is crucial in ensuring that a person is redressed from the actions that lead to him becoming a victim. The state or condition of being subjected to harm or violating one's rights can be termed as a person with victim status. To have a victim status, first, the person or group of persons need to identify themselves as victims; second, they need recognition and affirmation as victims.²⁷ Thus, recognition is necessary to have the status of a victim. Only individuals recognized by legal provisions as a victims can have the status to benefit from being a victim.

As to the legal definition of victim status, there is no direct mention of it in international human rights law. The international and regional legal frameworks specify who is eligible to submit a petition/application for human rights violations. Although the words *locus standi* and victim status may be used interchangeably sometimes, their use is slightly different in the European Convention on Human Rights context. *Locus standi* refers to the 'right or ability to bring a legal action to a court of law, or to appear in a court'²⁸ whereas, victim status refers to the persons who are victims having the status of applying to the court. Although both refer to the ability to move to court, what differentiates these two is that in the European Court of Human Rights (ECtHR), one needs to have victim status to have standing before the court.²⁹

²⁶ victim, (2024), <https://dictionary.cambridge.org/dictionary/english/victim> (last visited Oct 29, 2024); victim noun - Definition, pictures, pronunciation, and usage notes | Oxford Advanced American Dictionary at OxfordLearnersDictionaries.com,

https://www.oxfordlearnersdictionaries.com/definition/american_english/victim#:~:text=victim-,noun,disease%2C%20an%20accident%2C%20etc. (last visited Oct 29, 2024).

²⁷Hannah Marshall, *Victim as a Relative Status*, 28 THEORETICAL CRIMINOLOGY 157, 159 (2024).

²⁸ locus standi, (2024), <https://dictionary.cambridge.org/dictionary/english/locus-standi> (last visited Oct 29, 2024).

²⁹ A person bringing a case to the ECtHR needs to be personally affected by the violation of the Convention. If a person is not a victim and does not have a victim status, the court will not receive an application for a violation. In the case of *locus standi*, those who have an interest in the case can file an application. They need not

Generally, *locus standi* has a broader concept that is not only limited to victims but also includes actions brought in the public's interest.

2.2 Victimhood: Gateway to Justice

For human rights violation claims, irrespective of national, regional, and international jurisdictions, the applicants must fulfil several conditions to substantiate their claim. Victimhood, i.e. demonstrating the applicants were affected by the alleged violation acts as one of the most important criteria for their applications/complaints to be accepted. Working as a filter to accommodate legitimate claims, this requirement also ensures access to justice by verifying that the grievance is real and directly impacts the applicant. As a procedural safeguard, it prevents misuse of the court ensuring fairness for claimants.

In international and regional courts, victimhood is fundamental to the rule of admissibility whereas it is referred to as legal standing in national jurisdictions.³⁰ Sometimes, depending on the particularity of the case, this requirement is also assessed together with the merits. Therefore, it is not just a procedural requirement but is often central to determining the substance of a case. It goes beyond the procedural formality ensuring access to justice.

Depending on different jurisdictions, the term can also be used as 'cause of action, invocability, private right of action, or direct effect;' simply, a person's entitlement to rely, as the basis for a claim, on a rule of international law.³¹ The approach of different jurisdictions interpreting the term is distinct and mostly based on their respective legislations. However, in the context of climate change where applicants are bringing human rights violation claims often relying on regional and international legal instruments, there is a trend to take a rights-

necessarily be affected personally. This also includes *actio popularis*. However, ECtHR does not provide for the institution of it. This is the criterion that differentiates these two in this regard. See European Court of Human Rights, *Practical Guide on Admissibility Criteria*, at 9 ¶ 11 (Aug. 31, 2023), https://www.echr.coe.int/documents/d/echr/admissibility_guide_en (last visited Oct 29, 2024).

³⁰ ANDRÉ NOLLKAEMPER, NATIONAL COURTS AND THE INTERNATIONAL RULE OF LAW 93 (2011).

³¹ *Id.* at 92-93.

based approach in this decision.³² Courts from distinct jurisdictions incorporate environmental law violations through international human rights law legal categories.³³ In this context, how the victimhood of the applicants or the extent of the effect on them is interpreted plays an imperative role. It is not about how or to which extent their rights have been violated but whether they are getting proper remedies for their sufferings.

While delivering a judgment, the ECtHR analyses comparative jurisdictions in addition to its own rules. The approach of several human rights systems has been proven to be broadening the interpretation of victim status in the context of climate change. In this regard, discussing climate cases from national, regional, and international jurisdictions would be beneficial for the ECtHR as these might help shape the approach of the ECtHR in future cases of human rights violations due to climate change. Therefore, this chapter compares and analyses the case laws of other recognized human rights jurisdictions and constitutional courts to understand the overall approach toward victimhood.

2.3 National Courts' Approach

From individuals to associations, climate activists around the world are taking legal steps to limit the effects of climate change offering a novel approach to the dynamics of climate litigation.³⁴ Even though some countries do not have legislation specifically addressing climate change, lawyers have been urged to file cases because of the significance of the crisis.³⁵ At the same time, national courts have interpreted their constitutions in light of international law. Constitutional courts have acknowledged claims for human rights violations and environmental rights in cases where states fail to respond appropriately or undertake actions contributing to global warming and negatively impacting protected rights.

³² Maiko Meguro, *Litigating Climate Change through International Law: Obligations Strategy and Rights Strategy*, 33 LEIDEN JOURNAL OF INTERNATIONAL LAW 933 (2020).

³³ *Id.* at 935.

³⁴ Agnes Viktoria Rydberg, *supra* note 9 at 1.

³⁵ DANTING FAN ET AL., *10 Landmark Climate Change Cases*, (2022), <https://www.clientearth.org/latest/documents/10-landmark-climate-change-cases/> (last visited Sep 9, 2024).

Apart from the government, private parties such as individuals and organizations have been held accountable for their actions in numerous court proceedings.³⁶ Although there is a considerable number of cases in this regard, very few focus directly on interpreting victim status.

In this part, cases brought by individuals and association applicants from national jurisdictions directly dealing with the issue of the victimhood interpretation alleging violation of human rights due to climate change will be discussed. The challenges faced by these countries' constitutional and federal courts provide notable insights into how national courts tackle climate accountabilities under constitutional and human rights frameworks.

2.3.1 Cases by Individuals

In the cases brought by individuals asking for climate justice under their respective constitutions, the courts seem to take a rather flexible approach to interpreting victim status or accepting the legal standing of the applicants. This is because many countries ensure a right to a healthy environment under their constitution.³⁷ In April 2021, the German Federal Constitutional Court delivered a landmark decision adopting a far-fetched interpretation acknowledging the seriousness of climate issues allowing legal standing to individuals outside of its territory.³⁸ The case involved four constitutional complaints from different groups of people³⁹ against selected provisions of the Federal Climate Change Act and the

³⁶ Global Climate Change Litigation, CLIMATE CHANGE LITIGATION, <https://climatecasechart.com/non-us-climate-change-litigation/> (last visited Nov 14, 2024).

³⁷ For example, *see* Grundgesetz [GG] [Basic Law], art. 14(1); Mont. Const. art. 9(1); Const. Federativa do Brasil [Constitution] art. 225 (Braz.); S. Afr. Const., 1996, § 24; Kongeriket Norges Grunnlov [Constitution] art. 112 (Nor.); Constituição da República Portuguesa [Constitution] art. 66 (Port.); etc.

³⁸ *Neubauer v. Germany*, BVerfG, Mar. 24, 2021, Nos. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, Official English Translation available at <https://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/> (last visited Nov 30, 2024).

³⁹ Children and young people from Germany, Bangladesh and Nepal and some associations including Fridays for Future, Greenpeace, and Friends of the Earth (BUND). The complaints were primarily based on the fundamental rights outlined in the Basic Law (the Constitution of Germany), including the duty to protect the environment, the right to a future consistent with human dignity, and the right to an ecological minimum standard of living.

State's failure to take further measures to reduce greenhouse gas emissions.⁴⁰ They argued that the State's inadequate action according to the insufficient reduction requirement under the Act violates the human rights protected by the Constitution. The Court held the alleged provisions of the Federal Climate Change Act as unconstitutional and directed the State to revise the Act which was then positively accepted by the State.⁴¹

There was no question as to the legal standing of the German individuals as the Basic law protects their constitutional rights.⁴² They were found to be presently, individually and directly affected.⁴³ As for the German associations, the Constitution does not provide any provision for their standing.⁴⁴ However, the most significant part of this case is how the court interpreted the legal standing of the applicants living in Bangladesh and Nepal. Despite being citizens of other countries and residing outside of Germany, the Court allowed them to proceed with the lawsuit.⁴⁵ The Court stated that it had yet to clarify whether 'Basic Law's fundamental rights oblige Germany to contribute towards protecting people abroad against impairments caused by the effects of global climate change and under what circumstances such a duty of protection could potentially be violated.'⁴⁶

Given the sovereign limit of Germany, the Court found that the state could not protect individuals outside of its territory by taking adaptation and mitigation measures which is only effective within its jurisdiction.⁴⁷ However, it acknowledged the obligation under international law to take protective measures toward the poorer and harder-hit countries.⁴⁸ Although the Court found no violation concerning the rights of the foreign applicants, it emphasized the importance of current steps to reduce the burden on the future generation.⁴⁹

⁴⁰ *Neubauer*, Nos. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20 ¶ 1.

⁴¹ *Id.*

⁴² *Id.* at ¶¶ 90, 96.

⁴³ *Id.* at ¶ 129.

⁴⁴ *Id.* at ¶ 136.

⁴⁵ *Id.* at ¶ 90.

⁴⁶ *Id.* at ¶ 101.

⁴⁷ *Id.* ¶ 178.

⁴⁸ *Id.* ¶ 179.

⁴⁹ *Id.* at ¶ 116.

The court thought far ahead as to the future effect of the contested provision putting a strain on the enjoyment of fundamental rights of the future generation.⁵⁰ The court acknowledged that the described risk of future restrictions on freedom gives rise to the fundamental rights of its citizens being presently affected because this risk is built into the current legislation.⁵¹ It also noted that the fact that ‘it cannot resolve the problems of climate change on its own (...) does not invalidate the national obligation to take climate action.’⁵² On the other hand, the legislation does not directly affect the applicants in Bangladesh and Nepal at present, therefore, the measures will not apply to them.⁵³

In the USA, sixteen youths between the ages of two and eighteen challenged the constitutionality of fossil fuel-based provisions of Montana’s State Energy Policy, MEPA limitation⁵⁴, and the actions of the defendants allegedly causing and contributing to climate change violating their constitutional rights to a clean and healthy environment.⁵⁵ They requested injunctive relief to bar the defendants from subjecting them to the alleged unconstitutional law and to order them to account for GHG emissions and develop a remedial plan that would reduce GHG emissions.⁵⁶ The court held the State accountable in its 2023 decision for violating the applicants’ rights. This is the first win in climate litigation despite having the highest number of lawsuits in the US.⁵⁷

⁵⁰ *Id.* at ¶ 117.

⁵¹ *Id.* at ¶ 130.

⁵² *Id.* at ¶ 178.

⁵³ *Id.* at ¶ 132.

⁵⁴ It is a provision of the Montana Environmental Policy Act, Mont. Code Ann. § 75-1-201(2)(a) (MEPA Limitation), which prohibits environmental reviews by the State and its agents from contemplating the effects of greenhouse gas (GHG) emissions or climate change.

⁵⁵ *Held v. State of Montana*, No. BDV-2020-307 (Mont. Dist. Ct. Aug. 14, 2023).

⁵⁶ *Id.*

⁵⁷ More than 2000 cases have been filed in the USA on human rights violations from environmental harm. See U.S. Climate Change Litigation, CLIMATE CHANGE LITIGATION, <https://climatecasechart.com/us-climate-change-litigation/> (last visited Nov 14, 2024).

Termed a ‘landmark judgment’⁵⁸ the court took a flexible approach to assessing the legal standing of the applicants under the ‘*Lujan test*’⁵⁹ and found the plaintiffs successfully demonstrated the requirements of injury, causation, and redressability. The court extensively discussed the impacts on the plaintiffs including their physical and mental health (feelings like loss, despair, and anxiety), homes and property, recreational, spiritual, and aesthetic interests, tribal and cultural traditions, economic security, and happiness.⁶⁰ Additionally, the court highlighted the fact that because of their age, the plaintiffs would be ‘disproportionately affected’ and the injuries they had suffered were ‘concrete, particularized, and distinguishable from the public generally.’⁶¹

Based on scientific evidence and expert witnesses, the Court established a link between the State’s disregard for GHG emissions and the limitations of MEPA, which resulted in injuries to the plaintiffs.⁶² It further stated that Montana’s GHG contribution is ‘not *de minimis*’ and has local and global effects contributing to global climate change.⁶³ Regarding redressability, the Court clarified that mere psychological satisfaction resulting from the ruling would not suffice as redress rather declaring that Montana’s MEPA Limitation is unconstitutional would provide partial redress because continuous emission will continue to harm them.⁶⁴ As a result, the Court invalidated the MEPA Limitation. This decision is based on the Montana Constitution’s guarantee of ‘the right to a clean and healthy environment.’⁶⁵ Therefore, it can be indicated that the decision was comparatively limited in scope and reliant on the stipulation of the Constitution. Even so, it may be considered a pioneer in applying constitutional provisions to subsequent cases.

⁵⁸ Meher Bhatia, *Held v Montana Is a Historic Victory for Climate Action–But Also Human Rights*, 16 THE NATION (2023).

⁵⁹ For details, see Overview of the Lujan Test, LII / LEGAL INFORMATION INSTITUTE, <https://www.law.cornell.edu/constitution-conan/article-3/section-2/clause-1/overview-of-the-lujan-test> (last visited Nov 14, 2024).

⁶⁰ *Held*, No. BDV-2020-307 at 86-87.

⁶¹ *Id.*

⁶² *Id.* at 87.

⁶³ *Id.*

⁶⁴ *Id.* at 88-89.

⁶⁵ Mont. Const. art. II, § 3; Mont. Const. Art. IX, § 2.

2.3.2 Cases by Associations

On the national level, environmental associations have been more vocal in alleging human rights violations. This is because most national jurisdictions provide rules for public litigation where associations can bring cases on behalf of the public. Moreover, it is common for domestic courts to incorporate the rules and facilitate the enforcement of international law into national legal systems.⁶⁶ This has worked as a positive aspect for climate activist associations since it has helped to broaden the scope of standing for them. However, the courts have not always aspired to take a flexible approach.

*Urgenda*⁶⁷ was the first case to hold a government legally responsible for its national and international obligations to reduce greenhouse gas emissions and demonstrate that climate inaction may violate internationally recognized human rights.⁶⁸ Acting on its own and behalf of 886 individuals, it filed the case in the District Court of Hague in 2013.⁶⁹ It claimed that the State's insufficient action to control greenhouse gas emissions is unlawful and violates the due care exercise in society.⁷⁰ It challenged the climate policy alleging the violation of articles 2 and 8 of the ECHR.⁷¹

The District Court decided in favour of the claimants ordering the State to limit GHG emissions by at least 25%.⁷² The court based the decision on the duty of care to prevent dangerous climate change, however, did not apply ECHR or other international laws while deciding the standing of *Urgenda* on its own. On the other hand, *Urgenda*'s standing as the representative of the 886 individuals was rejected. It acknowledged that the individual

⁶⁶ Anna-Julia Saiger, *Domestic Courts and the Paris Agreement's Climate Goals: The Need for a Comparative Approach*, 9 TRANSNATIONAL ENVIRONMENTAL LAW 37, 40–41 (2020).

⁶⁷ *State of the Netherlands v. Stichting Urgenda*, Hoge Raad [HR] [Supreme Court of the Netherlands], Dec. 20, 2019, ECLI:NL: HR:2019:2007 (Neth.); Stichting Urgenda is a Dutch non-profit organization that aims for a sustainable society. See Home, URGENDA, <https://www.urgenda.nl/en/home-en/> (last visited Nov 14, 2024).

⁶⁸ César Rodríguez-Garavito, *supra* note 9 at 9.

⁶⁹ *Urgenda Foundation v. The State of Netherlands*, C/09/456689 / HA ZA 13-1396 (Eng.) at ¶¶ 2.1, 2.4.

⁷⁰ *Id.* ¶ 3.2.

⁷¹ *Id.*

⁷² *State of the Netherlands v. Stichting Urgenda*, Hoge Raad [HR] [Supreme Court of the Netherlands] at 2.3.1.

claimants had a stronger position regarding the claim.⁷³ However, due to insufficient details, the Court found they did not have sufficient interest to move forward.⁷⁴

On October 9, 2018, the Appellate Court rejected the State's appeal, affirming the District Court's decision. It re-examined the District Court's decision on whether Urgenda could rely on the provisions of the European Convention on Human Rights (ECHR).⁷⁵ The Court referred to Book 3 Section 305a of the Dutch Civil Code, which states that individuals who fall under the jurisdiction of the State of the Netherlands may also have the right to invoke Articles 2 and 8 of the ECHR in court if these articles have a direct effect, thus, allowing Urgenda to bring the claim.⁷⁶ The court concluded that Urgenda had a clear and sufficient interest in bringing the case. However, it referred to the representation on behalf of the individuals as *actio popularis* and denied urgenda's standing as the representative.⁷⁷ The ruling of the Appellate Court was based on the State's positive obligation or duty of care under Articles 2 and 8 of the ECHR towards Urgenda, which the State had breached by failing to pursue an ambitious reduction rate of GHGs by 2020.⁷⁸ After the State appealed, the Supreme Court of the Netherlands upheld the decision of the Court of Appeal in 2019 taking similar justifications for standing.

Although *Urgenda* was successful, due to the difference in legislation and the court's disinterest in taking flexible steps, other cases resulted differently. In the Irish case,⁷⁹ the Supreme Court refused to take a flexible approach where an environmental group, Friends of the Irish Environment (FIE) challenged the National Mitigation Plan of 2017 and alleged violations of the Climate Act, the Constitution of Ireland, and obligations under the ECHR.

⁷³ *Id.* ¶ 4.109.

⁷⁴ *Id.*

⁷⁵ *The State of the Netherlands v. Urgenda Foundation*, The Hague Court of Appeal, 9 October 2018, C/09/456689/ HA ZA 13-1396 (English Translation).

⁷⁶ *Id.* ¶ 36.

⁷⁷ *Id.* ¶ 35.

⁷⁸ *Id.* ¶¶ 73, 76.

⁷⁹ *Friends of the Irish Environment CLG v. The Government of Ireland*, (Supreme Court of Ireland), 31 July 2020, Appeal No: 205/19.

Although the High Court dismissed the case, it took a flexible approach to accept FIE's standing.⁸⁰

Citing the Supreme Court's ruling in *Mohan v. Ireland and the Attorney General*⁸¹ it noted that to have standing under a constitutional right, a plaintiff needs to demonstrate that his or her interests had been 'adversely affected or is in imminent danger of being adversely affected by the operation of the statute.'⁸² It then considered *Digital Rights Ireland Ltd v. Minister for Communications*⁸³, where McKechnie J. suggested that a flexible approach to standing can be taken where a particular public act could adversely affect a plaintiff's constitutional, European, or ECHR rights, or society as a whole.⁸⁴ Utilizing the *obiter dicta* in *Digital Rights Ireland*, the judge concluded that FIE has standing because it raised prominent issues of a constitutional nature that affected both its members and the public at large.⁸⁵

The Supreme Court reversed the decision. Although legal standing was not an issue in that proceeding, it was considered in the *obiter dicta*. It examined whether the exceptions to the general rule of standing apply to FIE, where a corporate entity can maintain a claim on behalf of others.⁸⁶ The Court discussed previous cases where flexible approaches to standing were taken and found that the present case was dissimilar to those (*Coogan* and *Iris Penal Reform Trust*) because no attempt was made to explain why FIE, instead of the individual plaintiffs, initiated the proceeding.⁸⁷ The Supreme Court emphasized that the standing rule is 'flexible but not infinitely so.'⁸⁸

⁸⁰ *Friends of the Irish Environment CLG v. The Government of Ireland* [2019] IEHC 747, ¶ 77 (Ir.).

⁸¹ *Mohan v Ireland and the Attorney General* [2019] IESC 18.

⁸² *Supra* note 80 at ¶ 124.

⁸³ *Digital Rights Ireland Ltd v. Minister for Communications* [2010] 3 I.R. 251.

⁸⁴ *Supra* note 80 at ¶ 131.

⁸⁵ *Id.* at ¶ 132.

⁸⁶ *Supra* note 79 at ¶ 7.5.

⁸⁷ *Id.* at ¶¶ 7.13-7.18.

⁸⁸ *Id.* at ¶ 7.19.

It found that the High Court wrongly based FIE's standing on the decision of *Digital Rights*. In that case, the plaintiff sought its own rights as a corporate entity, unlike the present one. The Court stated that this indicates that it does not provide any basis for suggesting that a corporate entity has standing to bring proceedings that solely seek the rights of individuals.⁸⁹ FIE did not give any practical reason why it initiated the proceeding instead of individuals, other than suggesting that it was protecting them from unnecessary costs.⁹⁰ The Court reasoned that allowing FIE standing in this case would expand the standing rule, which has no justification.⁹¹ As a result, it was concluded that FIE does not have standing to maintain the constitutional rights-based aspect of their case.

However, in *VZW Klimaatzaak v Kingdom of Belgium & Others*⁹² an NGO Klimaatzaak⁹³ initiated a lawsuit with 58000 co-plaintiffs by issuing a formal notice to 'four Belgian authorities'⁹⁴ in 2014 where the approach was flexible. The claimants alleged human rights violations under international treaties.⁹⁵ More than a hundred long-lived trees were represented in a request for third-party intervention. The Brussels Court of First Instance ruled in favour of the claimants stating that the defendants had failed to fulfil their positive obligations.⁹⁶ The Court took a 'broader and flexible approach'⁹⁷ to interpreting the

⁸⁹ *Id.* at ¶ 7.20.

⁹⁰ *Id.* at ¶ 7.22.

⁹¹ *Id.*

⁹² *Klimaatzaak ASBL v. Belgium*, Brussels Court of Appeal, Case No. 2021/AR/1589, Judgment of 30 Nov. 2023.

⁹³ It means 'climate case' in Dutch, hence the name 'Dutch climate case.'

⁹⁴ The Belgian State, the Walloon Region, the Flemish Region, and the Brussels-Capital Region - all represented by their respective governments.

⁹⁵ ECHR, arts 2, 8; International Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, arts 6, 24.

⁹⁶ *Klimaatzaak ASBL v. Belgium*, French-Speaking Ct. First Instance of Brussels, Civ. Section, 4th Chamber, Case No. 2015/4585/A, Judgment of 17 June 2021.

⁹⁷ Charlotte Renglet & Stefaan Smis, *The Belgian Climate Case: A Step Forward in Invoking Human Rights Standards in Climate Litigation?*, 25 ASIL (2021).

provisions of the legal standing of the claimants based on the Aarhus Convention⁹⁸. The Court separately examined the standing of Klimaatzaak as a legal entity, and the rest of the plaintiffs as individuals, and considered the intervention of the ‘life span’ trees. Article 9 of the Aarhus Convention requires the claimants to have a ‘sufficient interest’ in bringing the case that the national law determines. It analysed the admissibility requirement of the claimants in light of Articles 17 and 18 of the Judicial Code of Belgium, which require the interest to be personal, direct, real, and actual.⁹⁹

The Court determined that legal entities traditionally cannot make any claim under their statutory goals.¹⁰⁰ However, Article 9(3) of the Aarhus Convention provides them a ‘privileged status.’ The Court found that Klimaatzaak has a personal and direct interest in the case under its statutory goal of fighting climate change.¹⁰¹ While assessing the standing of natural claimants, it stated that although Article 17 of the Judicial Code excludes public interest litigation, their standing can be admissible if they can demonstrate an individual interest in the case rather than a general interest. Considering the present and future adverse effects of climate change, the court found that the natural claimants have direct and personal interest in the case meeting the standing requirements under Article 17 of the Judicial Code.¹⁰²

It concluded that since the claimants asked for relief ordering the public authorities to reduce GHG emissions, it demonstrates that they were aware the risks to their lives were real justifying the interest to be real and actual.¹⁰³ Thus, the Court concluded that Klimaatzaak and natural claimants met the requirements of having a personal, direct, real, and actual interest. On the representation of the ‘life span’ trees, however, the court rejected their

⁹⁸ Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, June 25, 1998, 2161 U.N.T.S. 447 (entered into force Oct. 30, 2001) [hereinafter Aarhus Convention].

⁹⁹ *Klimaatzaak ASBL v. Belgium*, Case No. 2015/4585/A at 47, For more details, see Belgian Judicial Code, Oct. 10, 1967, arts. 17–18.

¹⁰⁰ *Id.* at 51.

¹⁰¹ *Id.* at 52-55.

¹⁰² *Id.* at 48-51.

¹⁰³ *Id.* at 55-56.

voluntary involvement, finding that trees lack legal standing due to their lack of a legal personality.¹⁰⁴ The Court of First Instance found that the defendants had violated the related legislation. The claimants appealed this decision, and the Court of Appeal of Brussels upheld the Court of First Instance's decision, confirming that the climate policies of the Belgian state, the Flemish Region, and the Brussels-Capital Region had breached the provisions of the ECHR.

2.4 Regional Human Rights Approach

Three well-established regional human rights systems exist in Europe, America, and Africa to protect and promote human rights. Among these regions, the Council of Europe (CoE) has the most established regional mechanism, which is based on instruments such as the European Convention on Human Rights (ECHR) and corresponding enforcement mechanisms like the European Court of Human Rights (ECtHR). This is the oldest among the three systems. The Inter-American system of human rights is based on several instruments, including the American Convention on Human Rights (ACHR). This system covers the area under the Organization of American States (OAS). It has a dual implementation mechanism through the Inter-American Commission on Human Rights (IAComHR) and the Inter-American Court of Human Rights (IACtHR). The African human rights system is the newest within the African Union (AU) region. The African Charter on Human and Peoples' Rights (AChHPR) is the primary regional instrument. It is supervised by the African Commission on Human and Peoples' Rights (ACHPR), for implementation complemented by the African Court on Human and Peoples' Rights (ACtHPR).

¹⁰⁴ *Id.* at 56.

2.4.1 Inter-American Human Rights System

Although the Inter-American human rights system has a dual implementation mechanism, an individual cannot file a petition directly before the Inter-American Court of Human Rights (IACtHR).¹⁰⁵ The Inter-American Commission on Human Rights (IAComHR) works as both a charter and a treaty organ. Under the American Convention on Human Rights (ACHR), the Commission acts as a gatekeeper for a petition by reviewing it first. Only when a case is referred to the IACtHR by the Commission or a state party can the Court hear it.¹⁰⁶ Due to this requirement, fewer cases have been referred to the Court. In terms of climate cases, only four petitions have been submitted to the Commission and just two cases were referred to the Court for its advisory opinion.¹⁰⁷ Therefore, there has not been a contentious case related to climate change before the Court.

The filing process of a petition before the Commission is more flexible under the American Convention on Human Rights (ACHR) than the European human rights system. According to Article 44 of the ACHR, ‘any person or group of persons, or non-governmental entity’ recognized in a member state of the Organization of American States (OAS) has the right to file a petition. The only requirement is that the applicant alleges that there has been a violation of a right under any of the human rights instruments by a state party.¹⁰⁸ The applicant does not necessarily have to be the victim of the alleged violation; they can also file a petition on behalf of someone else who has been affected.¹⁰⁹ This differs from the ECHR, where only

¹⁰⁵ American Convention on Human Rights, Nov. 22, 1969, 1144 UNTS123 [hereinafter ACHR], Art. 61.

¹⁰⁶ *Id.*

¹⁰⁷ Inter-American System of Human Rights Archives, CLIMATE CHANGE LITIGATION, <https://climatecasechart.com/non-us-jurisdiction/inter-american-system-of-human-rights/> (last visited Nov 12, 2024).

¹⁰⁸ ACHR, Art. 47 (b); IACHR :: Rules of Procedure of the Inter-American Commission on Human Rights, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/basics/rulesiachr.asp> (last visited Nov 12, 2024).

¹⁰⁹ *Id.* IACHR :: Petition and Case System, INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR), <https://www.oas.org/en/IACHR/jsForm/?File=/en/iachr/mandate/petitions.asp> (last visited Nov 12, 2024).

the alleged victim can bring a case before the European Court of Human Rights (ECtHR). (see 3.2.2 *victim status pp. 43-53*)

Once an individual submits a petition, the Commission evaluates its admissibility before forwarding it to the State. During this stage, the Commission examines various legal issues, with the ‘victim requirement of the individual communication’ being one of the most crucial ones.¹¹⁰ According to Article 47 (b) of the ACHR, the applicant must present a *prima facie* case demonstrating a possible violation of an alleged right by a member state. This criterion is similar to the admissibility criterion of proving victimhood (alleged violation caused to the victim) under the ECHR. The Commission’s interpretation of the ‘victim requirement’ for the filed petitions will be examined hereafter.

In 2005, Sheila Watt-Cloutier, an Inuk woman, filed the first-ever petition alleging human rights violations caused by global warming.¹¹¹ She filed it on behalf of the Inuit community living in the Arctic regions of the United States and Canada. This also marked the first time any regional human rights system was presented with a petition alleging violations caused by climate change. Unfortunately, the Commission refused to hear the petition. After the initial study stage, on 16 November 2006, the Commission responded to the applicants stating that the information they provided was insufficient to enable it to determine any violation of rights.¹¹² Compared to the 175-page petition detailing the information and scientific evidence of climate change and how the U.S. is violating their human rights, this response by the Commission is quite disappointing. However, the petition established the link between climate change and human rights violations. The Commission’s unwillingness to gather further information showed its inflexible stance in this context, which may affect the examination of pending cases.

¹¹⁰ Diego Rodríguez Pinzón, *The "Victim" Requirement, the Fourth Instance Formula and the Notion of "Person" in the Individual Complaint Procedure of the Inter-American Human Rights System*, 7 ILSA J. INT’L & COMP. L. 369 (2000).

¹¹¹ *Sheila Watt-Cloutier v. United States*, Petition No. P-1413-05, Inter-Am. Comm’n H.R. (filed Dec. 7, 2005).

¹¹² *Id.*

In 2013, Athabaskan natives from the Arctic¹¹³, followed by several civil society organizations in 2019¹¹⁴ and Haitian children in 2021¹¹⁵, submitted petitions to link human rights violations with climate change. The first petition is similar to the Inuit one, but the Commission's response in the Inuit case was not detailed enough to predict how these pending cases will be examined. Although a significant amount of time has passed since the petitions were filed, it remains uncertain how the Commission will oversee them. If the Commission continues to be rigid, it may be difficult for future applicants to establish their claims or even to bring their cases before the IACtHR. One of the two petitions before the IACtHR for an advisory opinion (AO) has already been decided, providing hope for future applicants, while the other was filed just in 2023.

The advisory opinion function under Article 64 of the American Convention on Human Rights is extensive. Member states can request an interpretation or application of the Convention or other instruments, ask for clarification on the scope of human rights protection, or ask specific questions on different legal issues.¹¹⁶ Advisory opinions, although not binding, serve as useful guidelines for member states to safeguard and ensure the protection of human rights. Adopting AOs into national decisions is not new. These opinions help fill gaps in the law, clarify different concepts, and help develop a jurisprudence of human rights law. In 2016, the IACtHR gave the first AO related to climate change in response to a request by the Republic of Colombia.¹¹⁷ The court recognized the right to a healthy environment as an autonomous right and the relationship between the environment and human rights.¹¹⁸ This recognition set the ground for future climate cases where the applicants

¹¹³ Petition to the Inter-American Commission on Human Rights Seeking Relief from Violations of the Rights of Arctic Athabaskan Peoples Resulting from Rapid Arctic Warming and Melting Caused by Emissions of Black Carbon by Canada, Inter-Am. Comm'n H.R. (filed 2013).

¹¹⁴ Hearing on Climate Change Before the Inter-American Commission on Human Rights, Inter-Am. Comm'n H.R. (filed Sept. 2019).

¹¹⁵ Petition to the Inter-American Commission on Human Rights Seeking to Redress Violations of the Rights of Children in Cité Soleil, Haiti, Inter-Am. Comm'n H.R. (filed Feb. 4, 2023).

¹¹⁶ ACHR, art. 64.

¹¹⁷ Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, (Nov. 15, 2017) (requested by the Republic of Colombia).

¹¹⁸ *Id.*

could claim ‘diagonal’ human rights related to climate change.¹¹⁹ It expands the extent to which states are responsible beyond their borders, allowing complainants to base their case on the violation committed by a state other than their own.¹²⁰

There is another pending request for an advisory opinion jointly requested by Chile and Colombia in 2023.¹²¹ They asked for clarification of the scope of state obligations for responding to the climate emergency under the frame of international human rights law.¹²² The applicants asked 21 legal questions related to state duties on climate change, including adaptation, mitigation, and remediation of losses and damages.¹²³ This AO will further strengthen the link between the assurance of human rights and the protection of the environment. Furthermore, knowing the scope of a state’s obligation in preventing and mitigating climate change, it will be easier for the applicants to prove the causal link between the state’s alleged act or omission and their human rights violation due to climate change. A clearly defined standard of care can guide the development of climate laws and policies at a national level and help interpret other regional and national legal instruments.¹²⁴ It can also

¹¹⁹ Monica Feria-Tinta & Simon C Milnes, *The Rise of Environmental Law in International Dispute Resolution: The Inter-American Court of Human Rights Issues a Landmark Advisory Opinion on the Environment and Human Rights*, 27 YEARBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 64 (2016), <https://academic.oup.com/yielaw/article/doi/10.1093/yiel/yvy004/5126874> (last visited May 11, 2024).

¹²⁰ *Id.*

¹²¹ Request for Advisory Opinion on the Scope of State Obligations for Responding to the Climate Emergency, Advisory Opinion Requested by the Republic of Chile and the Republic of Colombia, Inter-Am. Ct. H.R. (2023).

¹²² *Id.*

¹²³ Rebecca Hamilton, *The ‘Year of Climate’ in International Courts*, JUST SECURITY (2024), <https://www.justsecurity.org/93942/climate-change-international-courts/> (last visited Nov 12, 2024).

¹²⁴ Lena Riemer & Luca Scheid, *Leading the Way: The IACtHR’s Advisory Opinion on Human Rights and Climate Change*, VERFASSUNGSBLOG (2024), <https://verfassungsblog.de/leading-the-way/> (last visited May 14, 2024).

enhance the normative tools and establish a foundation for holding states accountable for their environmental obligations.¹²⁵

2.4.2 African Human Rights System

Africa has a progressive regional human rights structure compared to the other two. It is the youngest among the three regional structures and has unique features that are distinguishable. The two enforcement mechanisms complement each other, providing more options for applicants to bring their communication. The African Charter on Human and Peoples' Rights (AChHPR) has provision for recognition of a right to a healthy environment under Article 24¹²⁶, which raises the possibility of encompassing climate change-related petitions.¹²⁷ Under this system, collective rights are recognized, interlinking individual and people's rights.¹²⁸ It also allows *actio popularis*, enabling NGOs to bring petitions to the ACtHR on behalf of the victims.¹²⁹ These characteristics distinguish AChHPR from the ECHR, as the ECHR focuses on securing individual rights and preventing public litigation.¹³⁰

A natural or legal person may submit a petition to the African Commission on Human and Peoples' Rights (ACHPR) and the African Court on Human and Peoples' Rights (ACtHPR) under the individual application criteria.¹³¹ Because of the collective nature of the rights,

¹²⁵ The climate emergency at the Inter-American Court of Human Rights, OPENGLOBALRIGHTS, <https://www.openglobalrights.org/climate-emergency-interamerican-court-human-rights/> (last visited Nov 12, 2024).

¹²⁶ All peoples shall have the right to a general satisfactory environment favourable to their development.

¹²⁷ Yusra Suedi & Marie Fall, *Climate Change Litigation before the African Human Rights System: Prospects and Pitfalls*, JOURNAL OF HUMAN RIGHTS PRACTICE huad024, 2 (2023), <https://academic.oup.com/jhrp/advance-article/doi/10.1093/jhuman/huad024/7223102> (last visited May 14, 2024).

¹²⁸ *Id.*, The Resource: Part III. The Regional Human Rights System, 4/6, <https://www.un.org/esa/socdev/enable/comp303.htm> (last visited Nov 12, 2024).

¹²⁹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, June 10, 1998, art. 5(3) [hereinafter Protocol].

¹³⁰ ECHR, Preamble; See Practical Guide on Admissibility Criteria, *supra* note 29 at 11 ¶ 24.

¹³¹ *Id.* African Charter on Human and Peoples' Rights, June 27, 1981, 21 I.L.M. 58 [hereinafter African Charter], art 55.

representation before the Commission and the Court is feasible, hence bypassing the requirement of victimhood. Individuals or groups that have not suffered direct injury from an action or omission may bring public lawsuits, especially regarding the right to a healthy environment, which is regarded as a collective right.¹³² When a violation impacts the entire community, this kind of litigation is pertinent. However, proof of a causal connection between the harm and the State's actions is required to fulfil the admissibility criteria.¹³³ The Commission has studied the role and obligation of the state to protect and promote human rights in the face of climate change and passed resolutions on the subject.¹³⁴ This could make the causal relationship clearer in later cases.

Although numerous climate cases have been filed under national jurisdictions, there has not yet been a single petition before the African human rights system alleging a breach of human rights because of climate change. The practical reason may be that states in this region are not significantly contributing to global warming on a bigger scale, and there are pending climate cases.¹³⁵ Furthermore, in contrast to other regional systems, this one has not been able to function well because of political unrest.¹³⁶ The African Union adopted the Malabo Protocol¹³⁷ in 2014 aiming to combine the African Court of Justice and the African Court of Human and Peoples' Rights to the African Court of Justice and Human Rights (ACtJHR) with international jurisdiction and a wider range of crimes. However, it is yet to be established as the required number of States for its entry into force has not ratified the

¹³² African Charter, art 24.

¹³³ Suedi and Fall, *supra* note 127 at 6.

¹³⁴ Resolution on Climate Change and Human Rights in Africa - ACHPR/Res.342(LVIII)2016; Call for Comments to the 'Study on the Impact of Climate Change on Human and Peoples' Rights in Africa', African Commission on Human and Peoples' Rights (2024), <https://achpr.au.int/en/news/press-releases/2023-10-28/call-comments-study-impact-climate-change-human-and-peo> (last visited Nov 12, 2024).

¹³⁵ Elsabé Boshoff, *The Prospects and Challenges of Litigating Climate Change Before African Regional Human Rights Bodies*, in CLIMATE LITIGATION AND JUSTICE IN AFRICA 125, 126 (Kim Bouwer et al. eds., 2024), <https://bristoluniversitypressdigital.com/view/book/9781529228977/ch006.xml> (last visited May 14, 2024).

¹³⁶ *Id.*

¹³⁷ Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights, adopted June 27, 2014.

Protocol. Therefore, the ACtHPR is still operational where applicants may communicate their submission.

2.5 International Human Rights Approach

The human rights mechanisms established by the United Nations, ensure that the 193 Member States comply with and monitor their human rights obligations. This is done through UN bodies and treaty bodies investigating complaints of human rights violations, both by individuals and between states.¹³⁸ The primary options for bringing a complaint under the UN human rights system are through the Human Rights Council (HRC) (it is a UN body accepting individual complaints also known as communications to identify human rights violations), and the Treaty bodies (10 Committees¹³⁹ of independent experts based on the respected Treaties that address human rights violations through inquiries and individual complaints).

As the consequences of climate change are widely acknowledged, there have been several complaints of human rights violations claiming that Member States have failed to meet their obligations under the UN treaties. However, for individual complaints to be filed, a state party must acknowledge the competence of the treaty body to hear communications by making a declaration or ratifying the optional protocol that created the complaint mechanism under the specific Treaty. This can make it difficult for individuals to access the enforcement mechanism for violation. Additionally, admissibility criteria must be met before a complaint can proceed under the treaty-based mechanisms.

¹³⁸ Instruments & mechanisms, OHCHR, <https://www.ohchr.org/en/instruments-and-mechanisms> (last visited Nov 12, 2024).

¹³⁹ Committee on the Elimination of Racial Discrimination (CERD), Committee on Economic, Social and Cultural Rights (CESC), Human Rights Committee (CCPR), Committee on the Elimination of Discrimination against Women (CEDAW), Committee against Torture (CAT), Committee on the Rights of the Child (CRC), Committee on Migrant Workers (CMW), Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), Committee on the Rights of Persons with Disabilities (CRPD), Committee on Enforced Disappearances (CED).

Complaints have been filed under the UN system that faced difficulties in proving exhaustion of domestic criteria, and victim status, among other factors. While some of these complaints have been successful, others could not meet the admissibility criteria and were not considered on their merits. However, how the Committees or the Human Rights Council have interpreted the victim status of the petitioners is significant to the current research. Moreover, the addition of climate change and its effects to the equation has shown differential approaches to interpretation by the enforcement mechanisms. In the case of *Chiara Sacchi v. Argentina*¹⁴⁰, sixteen youths from different nationalities brought the respondents States¹⁴¹ before the Committee on the Rights of the Child (CRC Committee) on 23 September 2019.

They alleged that the respondents were breaching their obligations under the United Nations Convention on the Rights of the Child (CRC) by failing to respect, protect, and fulfil their rights under Article 6 (right to life), Article 24 (right to health), and Article 30 (right to culture). However, the Committee declared the complaint inadmissible due to the non-exhaustion of domestic remedies. This case posed a new challenge to the admissibility of the decision, as the Committee had to deal with the interpretation of the victimhood of the complainants in the context of climate change and extraterritorial obligations of States under the Convention.¹⁴²

On 11 October 2021, the Committee released its ruling on the admissibility of the case. It separately evaluated the complainants' victim status in the context of climate change. It took note of the individual hardships that the complainants had described in their submission and concluded that they have been disproportionately impacted by the effects of climate change and that, in the absence of prompt action, these effects will last the entirety of their lives.¹⁴³ Therefore, the Committee has acknowledged past and potential future violations of children's

¹⁴⁰ *Sacchi v. Argentina*, U.N. Committee on the Rights of the Child, Comm. No. 104/2019, U.N. Doc. CRC/C/88/D/104/2019 (Sept. 22, 2021).

¹⁴¹ Argentina, Brazil, France, Germany, and Türkiye.

¹⁴² Yusra Suedi, *Litigating Climate Change before the Committee on the Rights of the Child in Sacchi v Argentina et al.: Breaking New Ground?*, 40 NORDIC JOURNAL OF HUMAN RIGHTS 549 (2022), <https://www.tandfonline.com/doi/full/10.1080/18918131.2022.2160093> (last visited Apr 25, 2024).

¹⁴³ *Sacchi v. Argentina*, Comm. No. 104/2019, ¶ 10.13.

rights on an individual level. It was further added in the decision that states have ‘heightened obligations’ to protect children from foreseeable harm under the Convention, especially due to the particular impact of climate change.¹⁴⁴ Emphasizing the state’s duty to protect children’s rights, the committee concluded that the complainants have established *prima facie* that they have personally experienced real and significant harm to justify their victim status.¹⁴⁵ Therefore, it was found that Article 5(1) of the Optional Protocol does not prevent the Committee from considering the communication.

Similarly, in *Daniel Billy and Others v Australia*¹⁴⁶, residents of the Torres Strait Islands complained to the Human Rights Committee (HRCttee) in 2019, known as the Torres Strait Island Petition. The authors alleged several human rights violations under the International Covenant on Civil and Political Rights (ICCPR). They claimed Australia violated their rights, including the right to life (Article 6), the right to home and family (Article 17), and the right to the minority community (Article 27) under the Covenant by failing to take mitigation and adaptation measures to combat climate change. The petitioners successfully established their claim, unlike *Sacchi*. This communication differs from the other in that the complaint was made collectively, alleging a violation of the community’s rights as a whole, rather than at the individual level. The decision sets a significant precedent for climate change lawsuits by acknowledging the unique vulnerability of indigenous peoples and their cultures to the consequences of climate change and affirming the state’s duty to protect a community from its negative effects.¹⁴⁷

The HRCttee thoroughly considered all admissibility requirements one by one. Concerning victim status, the committee referred to its previous decisions and stated that to claim victim

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* ¶ 10.14.

¹⁴⁶ *Billy and Others v Australia*, U.N. Human Rights Committee, Views Adopted under Article 5(4) of the Optional Protocol, Comm. No. 3624/2019, U.N. Doc. CCPR/C/135/D/3624/2019 (Sept. 22, 2022).

¹⁴⁷ Gabriel M. Lentner & Weronika Cenin, *Daniel Billy et al v Australia (Torres Strait Islanders Petition): Climate Change Inaction as a Human Rights Violation*, 33 REV EURO COMP INTL ENVIRO 136 (2024), <https://onlinelibrary.wiley.com/doi/10.1111/reel.12527> (last visited May 1, 2024).

status under Article 1 of the Optional Protocol, one must be personally affected.¹⁴⁸ Although the degree of concreteness of this requirement depends on the specific circumstances of the case, it is necessary to show that the state party, through its act or omission, has either already impaired the exercise of one's rights or that such impairment is imminent.¹⁴⁹ The Committee added that in cases where legislation, administrative practice, or decision has not yet been applied to one's detriment, the risk of being affected by it if applied should be more than a 'theoretical possibility'.¹⁵⁰

From the communication of the petitioners, the committee observed that the authors are 'highly exposed to adverse climate change impacts' due to their limited opportunity for internal relocation.¹⁵¹ They are also unable to take adequate measures because of their limited resources and special location.¹⁵² The HRCtee found that the authors are extremely vulnerable to severe climate change and concluded that their impairment of rights as a community has already occurred and is ongoing, which is more than a mere theoretical possibility.¹⁵³ This conclusion confirmed the victim status of the authors in the communication.

Ioane Teitiota v. New Zealand¹⁵⁴ was the first case in which a petitioner, who was denied asylum, alleged a violation of his right to life under ICCPR because of climate change.¹⁵⁵ In September 2015, Ioane Teitiota filed the complaint before the HRCtee. This case is significant because the committee recognizes that, due to the effects of climate change, sending someone back to their country may expose them to a violation of their rights under

¹⁴⁸ *Billy v. Australia*, Comm. No. 3624/2019, ¶ 7.9.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.* ¶ 7.10.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ *Teitiota v. New Zealand*, U.N. Human Rights Committee, Comm. No. 2728/2016, U.N. Doc. CCPR/C/127/D/2728/2016 (Oct. 24, 2019).

¹⁵⁵ Ayako Hatano, *Emerging International Norms to Protect "Climate Refugees"?: Human Rights Committee's Decision on Teitiota v New Zealand*, 10 JOURNAL OF HUMAN SECURITY STUDIES 32 (2021).

the Covenant, triggering the non-refoulment obligation of the sending state.¹⁵⁶ The committee examined his victim status under Article 1 of the Optional Protocol of the ICCPR and stated that to claim victim status, the state party's action should show either a past violation or an existing or imminent threat of violation.¹⁵⁷

While scrutinizing the victim status of the petitioner, the HRCttee questioned whether there would indeed be a risk of irreversible harm in the event of his deportation.¹⁵⁸ It concluded that the likelihood and imminence of any anticipated harm in the receiving state would be a crucial factor in assessing the risk.¹⁵⁹ Based on the evidence presented by the petitioner, the committee determined that the risk he faces is not just a 'hypothetical future harm', but a 'real predicament' that could lead to the impairment of his rights.¹⁶⁰ The committee did not find any violation by the state party in this case. However, this case will set a significant precedent for future cases that deal with the displacement of people due to climate change.¹⁶¹ This approach may have a wider impact on protecting asylum seekers under international human rights law in the future.¹⁶²

¹⁵⁶ *Teitiota v. New Zealand*, Comm. No. 2728/2016, ¶ 9.11.

¹⁵⁷ *Id.* ¶ 8.4.

¹⁵⁸ *Id.* ¶ 8.5.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.* ¶ 8.6.

¹⁶¹ Andrej Mahecic, *UN Human Rights Committee Decision on Climate Change Is a Wake-up Call, According to UNHCR*, (2020), <https://www.unhcr.org/news/briefing-notes/un-human-rights-committee-decision-climate-change-wake-call-according-unhcr> (last visited Sep 10, 2024).

¹⁶² Hatano, *supra* note 155 at 40.

Chapter 3

VICTIM STATUS UNDER THE EUROPEAN COURT OF HUMAN RIGHTS

3.1 Admissibility Criteria and Victim Status

Admissibility refers to the initial assessment of an application before it is eligible to be heard by the court. This stage functions as a filtering mechanism to lessen the enormous¹⁶³ caseload before the ECtHR and ensure the effective administration of justice. Article 35 of the European Convention of Human Rights incorporates the criteria for the admissibility of an application. The Article reads as follows:

1. *The Court may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognized rules of international law, and within a period of four months from the date on which the final decision was taken.*
2. *The Court shall not deal with any application submitted under Article 34 that*
 - (a) is anonymous; or*
 - (b) is substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation or settlement and contains no relevant new information.*
3. *The Court shall declare inadmissible any individual application submitted under Article 34 if it considers that:*
 - (a) the application is incompatible with the provisions of the Convention or the Protocols thereto, manifestly ill-founded, or an abuse of the right of individual application; or*

¹⁶³ For details, see the annual report by the European Court of Human Rights including the statistics for the applications allocated each year. According to the statistics of 2024 till 30 June, 14200 applications were allocated which might double at the end of the year. The statistics of 2023 and 2022 state 34650 and 45500 applications were allocated respectively within those years to a judicial formation.

(b) the applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits.

4. *The Court shall reject any application which it considers inadmissible under this Article. It may do so at any stage of the proceedings.*¹⁶⁴

According to this Article, several conditions need to be fulfilled, such as exhausting the domestic remedies and following the required four-month time limit to file the application under § 1. § 2 and § 3 state circumstances where the Court may not accept the individual application filed under Article 34¹⁶⁵ of the Convention or find the application inadmissible. The ‘Practical Guide on Admissibility Criteria’ prepared by the Registrar of the Court outlines the admissibility requirements for an individual application under Article 34 of the Convention in a detailed and systematic manner, referring to relevant case-laws and explanations when needed. This is not a binding document but a guide for the applicants, lawyers, researchers, and academicians to understand the admissibility requirements of the applications before the Court.

The guide outlines some substantive and procedural admissibility criteria that need to be fulfilled by the applicants for the application to be examined on the merits. The conditions incorporated into it for admissibility are not exhaustive as they evolve. This can be seen from the time limit modification from six to four months under the new Protocol of 2021.¹⁶⁶ According to the guide, admissibility criteria are divided into three categories for assessing the alleged violation. These are substantive, procedural, and merit-based criteria. The first step is to fulfil the substantive and procedural requirements. The substantive criteria include demonstrating the victimhood of the applicant and that the case falls under the Court’s jurisdiction. To demonstrate victimhood, the applicant must fall under one of the victim

¹⁶⁴ ECHR, Art. 35.

¹⁶⁵ Incorporates the individual application system under the Convention.

¹⁶⁶ Protocol No. 15 Amending the Convention for the Protection of Human Rights and Fundamental Freedoms, Aug. 1, 2021, C.E.T.S. No. 213.

categories and prove that he was personally affected by the violation.¹⁶⁷ (This will be discussed in detail in the next section under Article 34 of the Convention).

The ECtHR should have jurisdiction *ratione personae*, *ratione materiae*, *ratione temporis*, and *ratione loci*. Jurisdiction *ratione personae* refers to the state's liability, meaning that the alleged violation must be committed by a member state or be attributable to it.¹⁶⁸ An application can be declared incompatible *ratione personae* with the Convention if the applicants lack legal standing under Article 34 of the Convention or fail to demonstrate that they are a victim of the alleged violation.¹⁶⁹ The application would also be inadmissible where the application was filed against another individual, international organization, or state that did not accede to the Convention or involved a Protocol to the Convention that the respondent state has not ratified.¹⁷⁰ Jurisdiction *ratione materiae* means that the application must concern a violation of a right that is protected under the ECHR or any of its Protocols.¹⁷¹ Jurisdiction *ratione temporis* means that the violation of the rights was committed after the member state has ratified the Convention.¹⁷² Lastly, jurisdiction *ratione loci* requires the alleged violation to have taken place within the jurisdiction of the member state or in the territory effectively controlled by it.¹⁷³

The procedural requirements incorporate compliance with the four-month limit, exhaustion of domestic remedies, non-anonymity of the application, a substantially different subject matter, and without abusing the right of an application. This means that the applicant must exhaust all domestic remedies before moving to the ECHR, as it is only subsidiary in

¹⁶⁷ ECHR, art. 34.

¹⁶⁸ See Practical Guide on Admissibility Criteria, *supra* note 29 at 60 ¶ 270.

¹⁶⁹ *Id.* at 60 ¶ 274.

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 72 ¶¶ 340-341.

¹⁷² *Id.* at 67 ¶ 309.

¹⁷³ *Id.* at 66 ¶ 298.

nature.¹⁷⁴ After exhausting all domestic remedies, the application should be filed before the ECHR within four months from the final decision of the domestic court.¹⁷⁵

The applicant should follow the Rules of the Court¹⁷⁶ providing instructions specifically for individual applications. The applicant must identify himself in the application because failure to do that will make the application inadmissible for being anonymous.¹⁷⁷ Although the Court does not accommodate anonymous applications, the applicant may ask for anonymity by stating the reasons for such under Rule 47(4) of the Rules of Court. The Court requires the subject matter of the application to be new. If the application is on the same fact as already examined by the Court, or by any other procedure of an international investigation, it will not be admissible.¹⁷⁸ Lastly, the applicant should not abuse his right as an applicant by any conduct that is against the proper functioning of the Court.¹⁷⁹ Once these criteria are met, the case moves to the next phase: the merits. The court examines the case based on its merits. For an application to be considered admissible on its merits, it should not be manifestly ill-founded, and the applicants should face significant disadvantages due to the alleged violation.

As one of the substantive admissibility criteria, establishing the victimhood of an applicant is essential. This ensures that the Court will address the application brought by an aggrieved person who has a direct connection to the alleged violation. This also assists in ensuring individual human rights as per the Convention's mandate. Establishing the victim status of an application can be regarded as the gateway for justice before the court since the application will still be dismissed even if it has merit and complies with other conditions but cannot demonstrate victim status. By proving victim status, the individuals can be protected from the atrocious behaviour of the states allowing them to enjoy their fundamental rights without interruption.

¹⁷⁴ ECHR, art. 35 (1).

¹⁷⁵ *Id.*

¹⁷⁶ Rules of Court, Rule 47, Eur. Ct. H.R. (2024).

¹⁷⁷ *Id.* Rule 47(1); ECHR, art. 35 § 2 (a).

¹⁷⁸ ECHR, art. 35 § 2 (b).

¹⁷⁹ ECHR, art. 35 § 3 (a).

Furthermore, in the relevantly new context of climate change, proving the applicant(s)' victim status acquires even greater significance for the further evolution of human rights violation jurisprudence. It is comparatively difficult to prove victim status when applicants claim that their human rights have been violated as a result of climate change. In usual cases, applicants must present evidence of a violation that has already had an impact on them. However, the situation is significantly different in climate disputes, as it is often difficult to establish a clear connection between a state's act(s) or omission(s) and the alleged violation of rights. The concept of victimhood in the context of climate change is relatively new and requires the applicants to meet additional conditions. They need to demonstrate their claim before the ECtHR by incorporating legal, social, and scientific aspects.

3.2 Individual Victim Status under the Convention

According to the European Convention on Human Rights (ECHR) (hereinafter the Convention), two types of applications can be lodged before the European Court of Human Rights. Article 33¹⁸⁰ of the Convention incorporates inter-State cases whereas Article 34 includes the application lodged by individuals. Since this research only focuses on the victim status of individual applications, Article 33 would not be further explained. Article 34 reads as follows-

*The Court may receive applications from any person, nongovernmental organisation, or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the Protocols thereto. The High Contracting Parties undertake not to hinder in any way the effective exercise of this right.*¹⁸¹

The Court has established that to apply under Article 34 of the Convention, one must satisfy two conditions: he or she must fall into one of the categories of applicants mentioned in

¹⁸⁰ Any High Contracting Party may refer to the Court any alleged breach of the provisions of the Conventions and the Protocols thereto by another High Contracting Party.

¹⁸¹ ECHR art. 34.

Article 34 and must be able to make out a case by proving that there is a sufficiently direct link between him and the loss he has suffered as a result of the alleged violation of the Convention making him a victim.¹⁸²

3.2.1 Category of Victims

The Article categorizes the victims into three groups. A victim can be a natural person or a legal entity such as a non-governmental organization or a group of individuals. These people are eligible to seek redress in case of any violation of the provisions of the Convention or one of the Protocols¹⁸³. A natural person can apply regardless of his or her 'nationality, place of residence, civil status, situation, or legal capacity'¹⁸⁴. However, a deceased person cannot seek redress; only a natural person or someone on his or her behalf can approach the Court.¹⁸⁵

As for the legal entity that can claim to be a victim of a violation by a member state, only a non-governmental organization can apply to the Court. Legal status, rights given by the status, characteristics of its activity, the background in which it is carried out, and its level of independent status from political authorities can determine whether that legal entity falls within the second category or not.¹⁸⁶ Government organizations such as principal organs of the state, decentralized authorities, local and provincial authorities although autonomous in nature, a municipality or a part of it, entities applying governmental powers, or running public facilities under constitutional control do not fall under the second category of victims.¹⁸⁷ A group of individuals representing any governmental organization, or local authorities cannot

¹⁸² See *Vallianatos and Others v. Greece*, App. Nos. 29381/09 and 32684/09, Eur. Ct. H.R., Judgment, ¶ 47 (2013); *Tauira and Others v. France*, App. No. 28204/95, Commission Decision of Dec. 4, 1995, DR 83-B, at 130.

¹⁸³ To strengthen and improve the supervisory mechanism of the Convention, it was amended several times. 14 Protocols were adopted in total from time to time. Except for Protocol No. 1, 4, 6, 7, 12, 13 which is in force now, other Protocols have been repealed or lost their purpose.

¹⁸⁴ See Practical Guide on Admissibility Criteria, *supra* note 29 at 9 ¶ 9.

¹⁸⁵ *Id.* at ¶ 10.

¹⁸⁶ *Id.* at 10 ¶ 14.

¹⁸⁷ *Id.* at 9-10 ¶¶ 12-13.

claim victim status by lodging an application.¹⁸⁸ However, if they apply in their personal status or as a representation of a non-governmental legal entity, there is no obstacle in their application.¹⁸⁹

3.2.2 Victim Status

The Convention provides the category of persons eligible to be victims. However, it does not define the term ‘victim.’ As the Convention is considered a ‘living instrument,’ the Court has always interpreted the provisions of the Convention and its Protocols considering the present-day circumstances. Similarly, the Court is expected to interpret the term ‘victim status’ or ‘victimhood’ ‘according to this principle of interpretation.’¹⁹⁰ The Court’s decisions have established that the concept of ‘victim’ should be interpreted autonomously and irrespective of domestic concepts.¹⁹¹ Moreover, it states that one must ‘claim to be a victim’ to approach the Court. To claim the victim status, it is necessary to first understand what the term refers to.

An applicant can ‘claim to be a victim’ of the alleged violation by showing that there was a sufficient connection between the alleged violation affecting him/her and the alleged act/omission of the state. In which way the applicant can be affected has been established through years of case-laws of the ECtHR. According to those, a person can show that he or she has been affected directly or indirectly by the alleged violation of the rights guaranteed by the Convention or any of its Protocols.¹⁹² This way, the applicant can be a direct or indirect victim of the alleged violation. Thus, the connection can be either direct or indirect to demonstrate the victimhood of an applicant.

The case laws have recognized another set of victims alongside direct and indirect victims. In most cases, applicants who assert victimhood do so by bringing complaints about a right that has already been wronged, meaning that the state’s action or inaction occurred in the

¹⁸⁸ *Id.* at 10 ¶ 16.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 9 ¶ 7.

¹⁹¹ *Vallianatos v. Greece*, App. Nos. 29381/09 and 32684/09.

¹⁹² *Id.*

past. Conversely, to claim victimhood under this category, an applicant complains of the violation of a right that has not yet had an impact on him or of a prospective future breach that may have an impact on his rights. They are called potential victims. This type of victimhood broadens the traditional approach to the interpretation of victim status and adds another layer of protection for individuals from imminent violations of their rights.

Direct Victims

The criteria set by the ECtHR for direct victims are straightforward. In the case of *Klass and others v. Germany*¹⁹³, the ECtHR interpreted Article 34, which mentions ‘claiming to be a victim of a violation’, to refer to a person who claims to have been ‘actually affected’ by the alleged measure in question. The requirement of being ‘affected’, in other words, ‘directly affected’ by the alleged violation has been reiterated in the later decisions by the Court.¹⁹⁴ Furthermore, the Court requires the applicant to show the causal link between the alleged action or omission by a member state and its effect on him.¹⁹⁵ This is crucial for the admissibility of the application, as it is not possible for the Court to attend to all the applications before it.

Additionally, the Court has consistently held in its judgments and decisions that the Convention does not provide for the institution of an ‘*actio popularis*’¹⁹⁶ and that its function is generally not to evaluate the pertinent legal doctrines *in abstracto* but rather to determine whether their application to or impact on the applicant resulted in a violation of the

¹⁹³ *Klass and others v. Germany*, App. no. 5029/71, Eur. Ct. H. R. Judgment at ¶ 33 (1978).

¹⁹⁴ *Id.* See also, *Burden v. the United Kingdom*, App. No. 13378/05, Eur. Ct. H. R. GC Judgment (2008) at ¶ 33; *Tănase V. Moldova*, App. No. 7/08, Eur. Ct. H. R. GC Judgment (2010) at ¶ 104; *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, App. No. 47848/08, Eur. Ct. H.R., Judgment (2014) at ¶ 96; *Lambert and Others v. France*, App. No. 46043/14, Eur. Ct. H.R., Judgment (2015) at ¶ 89.

¹⁹⁵ *Tauira v. France*, App. No. 28204/95.

¹⁹⁶ It can be defined as a right resident in any member of a community to take legal action in vindication of a public interest. There is some uncertainty in legal literature whether the definition excludes the possibility that an individual interest of the actor may exist alongside the collective one, or whether in some circumstances the individual legal interest may be considered as implied in the collective one. *Actio Popularis*, OXFORD PUBLIC INTERNATIONAL LAW, <https://opil.oup.com/display/10.1093/law-mpeipro/el167.013.1167/law-mpeipro-el167> (last visited Nov 8, 2024).

Convention.¹⁹⁷ The applicant can only complain against a law whose mere existence introduces, directs, or authorizes measures incompatible with the rights of the claimant and directly affects them.¹⁹⁸ This explanation has been confirmed through the Travaux Préparatoires as per the court.¹⁹⁹ Thus, any natural person(s), legal entity, or group of individuals, if affected directly by the alleged violation, will be regarded as having victim status and be eligible to lodge an application when they prove the ‘sufficient link’²⁰⁰ between the alleged act and its effect.

Nonetheless, the court has not been rigidly applying this requirement of victim status. In **Karner v. Austria**²⁰¹, the court elaborated on the need for a flexible approach while interpreting Article 34 of the Convention. It stated that to put into motion the protection mechanism of the Convention, the existence of a victim of a violation under Article 34 is indispensable; that is why this requirement should not be ‘applied in a rigid, mechanical, and inflexible way throughout the whole proceedings.’²⁰²

There are several instances where the Court has acknowledged the applicant as a direct victim flexibly. According to the long-standing practice of the ECtHR, applications under Article 34 of the Convention can only be lodged by, or in the name of, individuals who are alive at the time of the submission.²⁰³ However, in the cases lodged under Articles 2, 3, and 8 of the Convention, the Court admitted the application by an individual or associations on behalf of the victim despite no valid form of authority being provided.²⁰⁴

¹⁹⁷ *Roman Zakharov v. Russia*, App. No. 47143/06, Eur. Ct. H.R., Judgment at ¶ 164 (2015).

¹⁹⁸ *Ireland v. the United Kingdom*, App. No. 5310/71, Eur. Ct. H.R., Judgment (Merits and Just Satisfaction), ¶ 240 (1978).

¹⁹⁹ *Id.*

²⁰⁰ *Tauira v. France*, App. No. 28204/95.

²⁰¹ *Karner v. Austria*, App. No. 40016/98, Eur. Ct. H.R., Judgment (Merits and Just Satisfaction), ¶ 25 (2003).

²⁰² *Id.*

²⁰³ *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, App. No. 47848/08.

²⁰⁴ *Id.* ¶¶ 103-114.

The ECtHR in the past did not accord applicant status as a victim in a case in which he/she was not a party to the domestic action.²⁰⁵ However, there are some decisions of the ECtHR where it has shifted this approach taken at the initial stages. Thus, if the domestic courts indicated that a third party would be affected by the proceeding as it would benefit or harm their rights and/or duties, the ECtHR also recognized the parties as victims.²⁰⁶ The Court has also adopted a more liberal approach as to the victim status given to an applicant who did not engage in the proceeding in the domestic system but was directly affected.²⁰⁷ This is an indication that the Court chose an autonomous concept approach while defining the term ‘victim’.²⁰⁸ In certain instances, the Court disregarded the domestic court’s interpretation of ‘victim’ by not acknowledging the applicant’s victim status, despite the domestic court’s recognition of this status.²⁰⁹

Indirect Victims

Over the years, the ECtHR has acknowledged the rights of an individual as an indirect victim if the person is a family member, next of kin, heir, or close relative of a victim. However, recognition is not absolute and depends on the circumstances and the articles according to which the application was lodged. In *Vallianatos and Others v. Greece*²¹⁰, the Court has defined indirect victims as those ‘to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end’.²¹¹ The concept behind this category of victims is that, in addition to the direct victims who are immediately harmed, those around the victim (usually relatives or other individuals who are intricately linked to

²⁰⁵ See Practical Guide on Admissibility Criteria, *supra* note 29 at 12 ¶ 28.

²⁰⁶ *Id.* See also *Margulev v. Russia*, App. No. 15449/09, Eur. Ct. H. R. Judgment (Merits and Just Satisfaction (2019); *Khural and Zeynalov v. Azerbaijan (no. 2)*, App. No. 383/12, Eur. Ct. H. R. Judgment (Merits and Just Satisfaction (2023).

²⁰⁷ See Practical Guide on Admissibility Criteria, *supra* note 29 at 12 ¶ 28. See also *Beizaras and Levickas v. Lithuania*, App. No. 41288/15, Eur. Ct. H. R. Judgment (Merits and Just Satisfaction (2023).

²⁰⁸ See Practical Guide on Admissibility Criteria, *supra* note 29 at 12 ¶ 28.

²⁰⁹ *Id.*

²¹⁰ *Vallianatos v. Greece*, App. Nos. 29381/09 and 32684/09.

²¹¹ *Id.*

the direct victim) may also be adversely affected and thereby suffer as a result of human rights violations that primarily affect the direct victims.²¹²

The ECtHR investigates several factors to admit the family member's indirect victim status. It is mostly based on the relationship between the victims and the applicant. In *Çakıcı v. Türkiye*²¹³, the Court mentioned the circumstances where the family member of a victim can be regarded as indirect victims. It has specified stating that a person's status as an indirect victim 'depends on the existence of special factors that give the suffering of the applicant a dimension and character distinct from the emotional distress that may be regarded as inevitably caused to relatives of a victim of a serious human rights violation'²¹⁴. It added special factors such as the 'proximity of the family tie, the particular circumstances of the relationship, the extent to which the family member witnessed the events in question, the involvement of the family member in the attempts to obtain information about the disappeared person, and how the authorities responded to those inquiries.'²¹⁵

While the Court's approach to considering family members as indirect victims is expansive, certain patterns can be identified for the cases where their victim status is recognized. Upon analysing the instances where indirect victim status was granted, it becomes apparent that these cases primarily involved applications filed for violations of articles 2, 3, 5, and 6 of the convention, and in which the rights of direct victims were transferable.²¹⁶ Furthermore, it is related to the time of death or disappearance of the victims for the submission of the application and whether their death or disappearance affects the interests of the applicant. There can be two instances: the direct victim dies or disappears before the submission or dies after the submission.

²¹² Dr Vassilis P Tzevelekos, *Standing Before the European Court of Human Rights*, MAX PLANCK ENCYCLOPEDIA OF INTERNATIONAL PROCEDURAL LAW (2019).

²¹³ *Çakıcı v. Türkiye*, App. No. 23657/94, Eur. Ct. H.R., Judgment ¶ 98 (1999).

²¹⁴ *Id.* See also Tzevelekos, *supra* note 212.

²¹⁵ *Id.*

²¹⁶ See Practical Guide on Admissibility Criteria, *supra* note 29 at (12-14) ¶¶ (30-41).

Where the direct victim died after the application was submitted, the Court has accepted the next of kin or heir who has sufficient interest in the case.²¹⁷ Widow and children²¹⁸, married partners²¹⁹, unmarried or *de facto* partners²²⁰, parents²²¹, siblings²²², children²²³, and nephew²²⁴ as indirect victims. If the victim dies after the submission of the application, the court has allowed the heirs to continue the application without changing the applicant's name.²²⁵ On the other hand, the situation is different when the victim dies before the submission of the application.²²⁶ The ECtHR adopts the autonomous interpretation of the term 'victim' and recognizes the standing of a relative 'when the complaints raised an issue of general interest pertaining to 'respect for human rights' and the applicants as heirs had a legitimate interest pursuing the application or their own rights were affected directly.'²²⁷

In such cases, the ECtHR has accepted the next of kin as an indirect victim who has a sufficient interest in the matter,²²⁸ and close family members, including parents.²²⁹ However, the Court explained that this approach is particularly necessary in certain situations due to the nature of the violation, as effective implementation of the Convention is of utmost importance.²³⁰ Nonetheless, for natural persons to have the status of an indirect victim, the

²¹⁷ *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, App. No. 47848/08.

²¹⁸ *Raimondo v. Italy*, App. No. 12954/87, Eur. Ct. H.R., Judgment (1994).

²¹⁹ *McCann and Others v. the United Kingdom*, App. No. 18984/91, Eur. Ct. H.R., Judgment (1995).

²²⁰ *Velikova v. Bulgaria*, App. No. 41488/98, Eur. Ct. H.R., Decision (1999).

²²¹ *Ramsahai and Others v. the Netherlands*, App. No. 52391/99, Eur. Ct. H.R., Judgment (2007).

²²² *Andronicou and Constantinou v. Cyprus*, App. No. 25052/94, Eur. Ct. H.R., Judgment (1997).

²²³ *McKerr v. The United Kingdom*, App. No. 28883/95, Eur. Ct. H.R., Judgment (2001).

²²⁴ *Yaşa v. Turkey*, App. No. 22495/93, Eur. Ct. H.R., Judgment (1998).

²²⁵ *Varnava And Others v. Turkey*, App. Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Eur. Ct. H.R., Judgment ¶ 111 (2009).

²²⁶ For details see Council of Europe, *Key Theme – Article 34/35 The Locus Standi of Relatives (Indirect Victims) to Bring a Case to the Court When the Direct Victim Has Died*. (updated on 31/08/2023).

²²⁷ See *Micallef v. Malta*, App. No. 17056/06, Eur. Ct. H. R. GC Judgment (2009), ¶¶ 44-51; *Marie-Louise Loyen and Bruneel v. France*, App. No. 55929/00, Eur. Ct. H. R. Judgment (2005), ¶¶ 21-31.

²²⁸ *Varnava And Others v. Turkey*, App. Nos. 16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90.

²²⁹ See Practical Guide on Admissibility Criteria, *supra* note 29 at 12 ¶ 31.

²³⁰ *Fairfield v. the United Kingdom*, App. No. 24790/04, Eur. Ct. H. R., Decision (2005).

death or disappearance of the direct victim must be linked to the alleged violation of the ensured rights. Because where the alleged violation was not intricately linked to the death or disappearance of the direct victim, the Court took a more restrictive step for admissibility of victim status.²³¹ Showing the sufficient link is significant for the cases brought under Article 3 of the ECHR. As for the cases brought under Articles 5, 6, or 8 of the Convention, the Court granted victim status to close relatives who showed moral interests in the case, wanted to protect their own and family reputation, or had a material interest based on having a direct effect on their pecuniary rights.²³²

In terms of the victim status of legal persons and NGOs, the ECHR has been rather strict in interpreting its requirements. When shareholders brought complaints, the Court differentiated between those issues that touched upon the legal personality of a company and those that concerned the legal relationship between shareholders and the company.²³³ The Court recognised the victim status for individual applications under Article 34 of the Convention only when the complaints have been filed by natural persons. However, when an NGO or an association intervened and filed a complaint, the ECtHR denied the victim status when the organization's interest was not directly at risk, despite some of the individual members being victims themselves.²³⁴ The Court also refused victim status for the associations whose main goal is to protect the rights of the alleged victims.²³⁵ This restrictive approach presents difficulties in climate change cases, as it hinders environmental organisations for climate cases.

Potential Victims

Although the established rule for the ECtHR is that it does not allow complaints *in abstracto* alleging a violation of the Convention, there are certain situations where it was flexible in

²³¹ See Practical Guide on Admissibility Criteria, *supra* note 29 at 13 ¶ 34. See also *Khayrullina v. Russia*, App. No. 29729/09, Eur. Ct. H.R., Judgment ¶¶ 91-92 and ¶¶ 100-107 (2017); *Magnitskiy and Others v. Russia*, App. Nos. 32631/09 and 53799/12, Eur. Ct. H.R., Judgment ¶¶ 278-279 (2019).

²³² *Centre for Legal Resources on Behalf of Valentin Câmpeanu v. Romania*, App. No. 47848/08, ¶ 100.

²³³ See Practical Guide on Admissibility Criteria, *supra* note 29 at 14 ¶ 42.

²³⁴ *Id.* at 15 ¶ 44.

²³⁵ *Id.*

granting victim status to potential victims of the alleged violation. This flexible approach is taken where interpreting the term rigidly may have negative consequences on securing rights in case of a violation.²³⁶ The standards for claiming a ‘potential victim’ are considerably high. Throughout the years, the Court has determined the criteria to meet the status of a potential victim. To claim the status, an applicant must demonstrate ‘reasonable and convincing evidence of the likelihood that a violation affecting him or her personally will occur’²³⁷. The Court additionally decided that a potential victim’s status cannot be determined based on ‘mere suspicion or conjecture.’²³⁸ It is essential to provide evidence of a sufficient potential link to claim potential victim status.

Thus, it can be said that when a person claims that his rights have been violated, even though the law or practice causing the violation may not be implemented yet or even if it is implemented, he has no knowledge of it, and if it is likely to be implemented, which has the probability of affecting him, then the applicant can be called a potential victim.²³⁹ Nonetheless, according to the court, the pertinent criteria for determining whether an applicant meets the criteria for potential victim status ‘are to be determined in each case according to the Convention right or rights allegedly infringed [...] and the connection between the applicant and those measures.’²⁴⁰ The Court has adopted several approaches such as effective interpretation, the European consensus principle, and the principle of autonomous concept in various cases and accepted or denied the victim status of potential victims.

From the analysis of these cases, it can be seen that the court considered several circumstances to interpret the potential victimhood of different applicants. In ***Dudgeon v. the***

²³⁶ Gülsüm Cansu Dikkaş, *The Concept of Potential Victim in Individual Application to European Court of Human Rights*, 5 JOURNAL OF ÇANKAYA UNIVERSITY FACULTY OF LAW at 4130 (2020).

²³⁷ See *Senator Lines GmbH v. Austria and Others*, App. No. 56672/00, Eur. Ct. H.R., Decision (2004), *Centre for Legal Resources on Behalf of Valentin Câmpeanu V. Romania*, App. No. 47848/08, ¶ 101, *Tauira and 18 Others V. France*, App. No. 28204/95.

²³⁸ *Id.*

²³⁹ Cansu Dikkaş *Supra* note 236.

²⁴⁰ *Klass and Others v. Germany*, App. No. 5029/71.

United Kingdom,²⁴¹ the law criminalising homosexuals put the applicant at great risk of being prosecuted unless he changed his behaviour.²⁴² Despite the absence of the particular order that required the applicant to alter his conduct with the threat of legal proceedings if he persisted, the court found that the applicant fulfilled the prerequisite of victim status.²⁴³ An analogous approach was taken in **Norris v. Ireland**,²⁴⁴ which was filed on a similar allegation.

In the case of **Klass and Others v. Germany**,²⁴⁵ the Court decided the potential victim's status unconventionally. Secret surveillance was done under the alleged law on the applicants, and this was not notified to them violating articles 8, 6, and 13.²⁴⁶ However, the applicants did not find any evidence that would show that the law was implemented on them. In a way, this was a classic case of the law in the abstract. Due to the secret nature of the law, the applicants were unable to provide evidence of whether the law had been applied to them. Based on this constraint, the court found that the applicants could be considered potential victims.²⁴⁷ A similar interpretation approach was observed in **Roman Zakharov v. Russia**²⁴⁸. This too involved secret surveillance without any evidence. The Court noted that the secret nature of the surveillance, as permitted by the contested law, affected all users of mobile telephone communications.²⁴⁹ This, combined with a lack of effective remedy at the national domestic level, justified an examination of the law in the abstract.²⁵⁰

Soering v. the United Kingdom²⁵¹ is a classical case in which it was established that extradition by the state created the risk of Article 3 of the Convention being violated and

²⁴¹ *Dudgeon v. the United Kingdom*, App. No. 7525/76, Eur. Ct. H.R., Judgment (1981).

²⁴² *Id.* at ¶ 41.

²⁴³ Alexandra Nordlund, *Locus Standi in Climate Change Cases Before the European Court of Human Rights* (2021).

²⁴⁴ *Norris v. Ireland*, App. No. 10581/83 Eur. Ct. H. R. Judgment (Merits and Just Satisfaction), (1988).

²⁴⁵ *Klass and Others v. Germany*, App. No. 5029/71.

²⁴⁶ *Id.* at ¶¶ 39, 61, 73.

²⁴⁷ *Id.* at ¶¶ 34-38.

²⁴⁸ *Roman Zakharov v. Russia*, App. No. 47143/06.

²⁴⁹ *Id.* at ¶ 178.

²⁵⁰ *Id.*

²⁵¹ *Soering v. the United Kingdom*, App. No. 14038/88, Eur. Ct. H.R., Judgment (1989).

making the applicant a potential victim. The applicant was facing murder charges in the US and was detained in the UK.²⁵² His extradition was ordered but not enforced yet. The Court looked at the issue of whether the enforcement of his removal would put him at risk of any treatment that violates Article 3 of the Convention in the US.²⁵³ Under US law, he had the risk of facing a death sentence or life sentence. The Court concluded that evidence of the likelihood of the applicant's exposure to the 'death row phenomenon' if he was extradited was proved, and this exposure would make the extradition a breach of Article 3.²⁵⁴ Assessing the applicability of Article 3 of the Convention, the Court interpreted the victimhood of the applicant to be potential.²⁵⁵

From these cases, two types of potential victim status can be identified. The first instance is where a person claims to be presently affected or has been affected by a particular legislative measure of the country (*Klass, Roman Zakarov*), and the second one is where the applicant argues the possibility of being affected sometime in the future (*Soering, Dudgeon, Norris*).²⁵⁶ For the second type, the requirement of the 'reasonable and convincing evidence of a likelihood of a violation affecting the applicant' attributes much significance.²⁵⁷ This is one way of looking at potential victimhood where the nature and extent of the conditions for claiming a victim of violation are considered.²⁵⁸

The Court also considers matters after the application is filed where an alleged violation has already occurred, but subsequent events may give rise to the loss of the status of 'victim'.²⁵⁹ One classical instance is *Senator Lines GmbH v. Austria and others*²⁶⁰. In this case, a German limited company was fined by the European Commission (EC) for violating competition rules. However, the fine was not to be executed immediately as the EC informed

²⁵² *Id.* at ¶ 11.

²⁵³ *Id.* at ¶ 85.

²⁵⁴ *Id.* at ¶ 99.

²⁵⁵ *Id.* at ¶ 111.

²⁵⁶ *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20 at ¶¶ 469-471.

²⁵⁷ *Id.*

²⁵⁸ *Senator Lines GmbH v. Austria and Others*, App. No. 56672/00, Eur. Ct. H. R. GC Decision (2004).

²⁵⁹ *Id.*

²⁶⁰ *Id.*

if there was an appeal made against the decision. The company requested interim relief, but it was rejected. Subsequently, they complained before the ECtHR, claiming they were denied a fair trial, violating their right under Article 6 of the Convention.

However, the fine imposed on the company was not enforced; rather, it was quashed before the ECtHR decided on the application. The ECtHR denied the potential victim status claimed by the applicant on the basis that it could not produce ‘reasonable and convincing’ evidence of the likelihood that a violation affecting it would occur because there was no fear of the fine being imposed anymore. However, in instances where there was a favourable decision in the domestic courts, it should not infer that the applicant’s victim status will be lost unless the decision is expressly acknowledged and remedied by the national jurisdiction.²⁶¹ The Court has also denied the admissibility of victim status where the applicant was partly responsible for the violation of the alleged right.²⁶²

3.3 Victim Status in Environmental Cases

From the early 1990s, the European Court of Human Rights began receiving petitions on human rights violations resulting from environmental degradation. The first environmental case that has ever been taken before the ECtHR is ***Powell and Rayner v. the United Kingdom***,²⁶³ which can be seen as starting the Court’s activities in the sphere of environmental protection. While the case was not interpreted as successful, the ECtHR first evaluated environmental issues in terms of human rights and paved the way for the following ones. In such cases, the interpretation of ‘victim status’ has shown that the Court has been flexible and lenient, aligning its decisions with various environmental circumstances. The

²⁶¹ See *Dalban v. Romania*, App. No. 28114/95, Eur. Ct. H. R., GC Judgment (1999); *Constantinescu v. Romania*, App. No. 28871/95, Eur. Ct. H. R., Judgment (2000). Although these cases are not about potential victimhood, however, it can be inferred that loss of victimhood will not occur in the same way in an application where the applicant claims potential victimhood.

²⁶² See Practical Guide on Admissibility Criteria, *supra* note 29 at 15 ¶ 38. See *Paşa and Erkan Erol v. Turkey*, App. No. 51358/99, Eur. Ct. H.R., Judgment (2006).

²⁶³ *Powell and Rayner v. the United Kingdom*, App. No. 9310/81, Eur. Ct. H. R., Judgment (1990).

analysis of the cases also shows how over time the Court addressed direct, indirect, and potential effects of environmental degradation on the applicants.

The general requirements for proving victim status in ECtHR cases also apply to environmental cases. From the case laws, one additional criterion is needed for a human rights violation claim in an environmental context. The Court has established that the Convention of the Protocols does not give general protection of the environment.²⁶⁴ However, to claim to be a victim of a specific environmental harm or risk, the applicant needs to demonstrate that he or she is or is at the risk of personally being affected by that particular environmental hazard. This has been the priority for every environmental case before the ECtHR while deciding the victim status of the applicant. The criteria the Court has relied on to establish victim status include ‘issues such as the minimum level of severity of the harm in question, its duration, and the existence of a sufficient link with the applicant or applicants, including, in some instances, the geographical proximity between the applicant and the impugned environmental harm’²⁶⁵.

The case-law guide on environment by the registry of the Court provides the general principles of victim status in the context of environmental cases and gives an overall idea where an applicant can claim to be a direct, indirect, or potential victim of a specific environmental harm under Article 34 of the Convention.²⁶⁶

²⁶⁴ *Kyrtatos v. Greece*, App. No. 41666/98, Eur. Ct. H. R. Judgment (Merits and Just Satisfaction), 2003.

²⁶⁵ See *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20 at ¶ 472.

²⁶⁶ Guide to the case-law of the European Court of Human Rights- Environment, (2024), <https://ks.echr.coe.int/> (last visited Nov 8, 2024).

3.3.1 Direct Victim

López Ostra v. Spain²⁶⁷ is the first landmark environmental case where the ECtHR acknowledged the applicant as a direct victim of the alleged violation from the environmental causes. Ms. López Ostra resided close to a waste treatment plant that frequently released bad odours, noise, and pollutants that affected Ms. López Ostra and her family's health.²⁶⁸ She also alleged that the Spanish authorities did not take adequate steps to ensure her right to respect for her private and family life guaranteed under Article 8 of the ECHR.²⁶⁹ The case initiated the precedent that severe environmental pollution can directly hinder individuals' private and family lives, classifying them as victims under the Convention.²⁷⁰ This case paved the way for future similar cases as it established a direct correlation between environmental harm and infringement of human rights, serving as the basis for the subsequent judgments.

Similarly, the ECtHR acknowledged the victim status of Ms. Fadeyeva in **Fadeyeva v. Russia**.²⁷¹ She alleged that the operation of a steel plant close to her home endangered her health and well-being under Article 8 of the Convention.²⁷² The victimhood of the applicant was examined together with the applicability of Article 8 in an environmental context. The Court found that to fall within the scope of Article 8 of the Convention, complaints relating to environmental nuisances have to show, firstly, that there was an actual interference with the applicant's private sphere and, secondly, that a level of severity was attained.²⁷³

After going through strong evidence, the Court concluded that the applicant's health deteriorated as a result of her prolonged exposure to the industrial emissions affecting her quality of life at home, bringing the situation under Article 8.²⁷⁴ The Court found the nexus between the emissions and the state raising the issue of its positive obligation under Article

²⁶⁷ *López Ostra v. Spain*, App. No. 16798/90, Eur. Ct. H. R. Judgment (1990).

²⁶⁸ *Id.* at ¶¶ 7-8.

²⁶⁹ *Id.* at ¶ 30.

²⁷⁰ *Id.* at ¶ 51.

²⁷¹ *Fadeyeva v. Russia*, App. No. 55723/00, Eur. Ct. H. R. Judgment (2005).

²⁷² *Id.* at ¶ 3.

²⁷³ *Id.* at ¶ 70.

²⁷⁴ *Id.* at ¶¶ 79-88.

8. As the State failed to fulfil its positive obligation to either reduce the pollution or relocate the applicant, it was concluded that this has affected the applicant personally, violating her rights.²⁷⁵ Likewise, the Taranto residents who suffered direct harm from the steel plant were considered by the court as victims.²⁷⁶ The large-scale pollution from an industrial plant, which caused environmental degradation endangering public health, prompted the Court to declare those who were victims.²⁷⁷

Where the applicability of Article 8 of the Convention is in question in an environmental case, the Court has considered the proximity of the applicant's homes to the sources of pollution.²⁷⁸ In *Pavlov v. Russia*,²⁷⁹ the applicants alleged that severe industrial pollution in Lipetsk had endangered their health and impaired the quality of their lives for many years and that the state had failed to take effective protective measures in that regard.²⁸⁰ The applicants in this case did not reside in the vicinity of any factory but rather several kilometres away from large undertakings.²⁸¹ However, the Court found the case material to support the applicants' allegations that the levels of pollution experienced by them in their daily lives cannot be negligible and went beyond the environmental hazards inherent in life in every modern city.²⁸² It found the pollution to affect the applicants adversely and, to a sufficient extent, their private lives during the period under consideration.²⁸³ A similar approach has been taken in other environmental cases in the applicability of Article 8.²⁸⁴

²⁷⁵ *Id.* at ¶ 92.

²⁷⁶ *Cordella and Others v. Italy*, App. Nos. 54414/13 and 54264/15, Eur. Ct. H.R. Judgment (2019).

²⁷⁷ *Id.*

²⁷⁸ *Pavlov v. Russia*, App. No. 31612/09, Eur. Ct. H. R. Judgment, 2022 at ¶ 63.

²⁷⁹ *Id.*

²⁸⁰ *Id.* at ¶ 53.

²⁸¹ *Id.* at ¶ 64.

²⁸² *Id.* at ¶ 71.

²⁸³ *Id.*

²⁸⁴ For details also see *Guerra v. Italy*, App. No. 14967/89, Eur. Ct. H. R. GC Judgment (1998).

3.3.2 Indirect Victim

Taking recourse to the general case law under Article 34 of the Convention, the ECtHR has acknowledged that the next-of-kin of a person who has died in an environmental context can claim to be an indirect victim of the alleged violation of Article 2 of the Convention.²⁸⁵ In the case of *Brincat v. Malta*²⁸⁶ five applicants brought the case alleging violation of Articles 2 and 8 of the Convention. The applicants (or their relatives) were full-time employees of a government ship repair yard who were constantly exposed to asbestos particles during their employment. This damaged their health, and eventually, Mr. Attard, the relative of the fifth applicant, died from asbestos-related cancer. Although the Court did not separately discuss the victim status of the applicants under the admissibility head, it was examined together with the applicability of the Articles.

The Court found a sufficient link between the applicant's illness and death (for Mr. Attard) and the long-term exposure to asbestos from the ship repair yard.²⁸⁷ The Court stated that the Maltese Government had known or ought to have known of the dangers arising from exposure to asbestos at least from the early 1970s, given the domestic context as well as scientific and medical opinion accessible to the Government at the time.²⁸⁸ Despite that, the government has failed to provide adequate health and safety measures to the workers.²⁸⁹ The Court concluded that the respondent has failed to satisfy their positive obligation, violating Article 8 for the first four applicants and the substantive aspect of Article 2 for the fifth applicant. It can be inferred from this decision that the Court acknowledged the direct victimhood of the first four applicants and the indirect victimhood of the fifth applicant in the environmental context.

²⁸⁵ *Brincat v. Malta*, App. Nos. 60908/11, 62110/11, 62129/11, 62312/11, 62338/11, Eur. Ct. H. R. Judgment (Merits and Just Satisfaction) (2014) at ¶ 87.

²⁸⁶ *Id.* at ¶¶ 6-13.

²⁸⁷ *Id.* at ¶ 104.

²⁸⁸ *Id.* at ¶ 105.

²⁸⁹ *Id.* at ¶ 106.

3.3.3 Potential Victim

The ECtHR has followed the traditional requirements of ‘reasonable and convincing evidence of the likelihood of a potential violation’ to examine potential victimhood in environmental cases. For example, in *Asselbourg v. Luxembourg*²⁹⁰ the applicants complained that the steelwork project would result in environmental damage and that it would affect their right to a private and family life.²⁹¹ However, the Court found that the applicants could not demonstrate that the lack of adequate precaution taken by the authorities would have the likelihood of infringing their rights.²⁹² Similarly, in *Vecbaštika and Others v. Latvia*,²⁹³ the Court concluded that the applicant could not produce reasonable and convincing evidence that there would likely be a risk endangering their private and family life.²⁹⁴

Over the years, the ECtHR has addressed numerous environmental cases, including issues related to natural and industrial pollution, exposure to toxins, waste dumping, environmental risk, access to information, emissions, contamination, radiation, and natural disasters causing the infringement of rights protected by the Convention.²⁹⁵ The case law has been instrumental in establishing the connection between environmental harm and violations of human rights. This has led to the consideration of climate change cases. The court’s adaptable interpretation of the Convention has motivated subsequent plaintiffs to bring claims related to climate change.

²⁹⁰ *Asselbourg v. Luxembourg*, App. No. 29121/95, Eur. Ct. H. R. Decision (1999).

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Vecbaštika and Others v. Latvia*, App. No. 52499/11, Eur. Ct. H. R. Decision (2019).

²⁹⁴ *Id.*

²⁹⁵ See Factsheet – Environment and the ECHR, European Court of Human Rights, Press Unit (April 2024).

3.4 Representation and *Locus Standi*

Apart from individual application under Article 34 of the Convention, any person, legal entity, or group of individuals may apply to the Court through official representatives under Rule 36(1) of the Court²⁹⁶. Rule 36(4) states who can represent an applicant and the conditions the representative needs to fulfil before the court. The representatives must present a power of attorney or duly signed written authority by the applicant under Rule 45(3) before the Court to demonstrate their authority to act on behalf of the victims. They need to show that they have received ‘specific and explicit instructions’ from the alleged victim to act in a certain way.²⁹⁷ The Court has emphasised the communication between the alleged victim(s) and the representatives. In cases where the alleged victim(s) lost contact with the representative, the ECtHR had deemed them losing interest in pursuing the application and struck out the application under Article 37(1) of the Convention.²⁹⁸

Generally, minor children are represented by their natural parents before the Court to protect their interests on behalf of them.²⁹⁹ Where there is a conflicting interest between the parents, the parent entitled to custody represents the children.³⁰⁰ The ECtHR does not allow a third-party intervener to act as a representative.³⁰¹ These general rules are established through the case-laws of the ECtHR. However, there are some exceptional circumstances where the Court acknowledged representation or legal standing by individuals or associations on behalf of the alleged victim(s), although the general rules were not followed. Special considerations were shown mostly in the alleged breach of Articles 2, 3, and 8 of the Convention, where the ECtHR considered the vulnerability of the victims.³⁰² The Court considered the age, sex, or

²⁹⁶ Rules of Court, Eur. Ct. H.R. (2024).

²⁹⁷ See Practical Guide on Admissibility Criteria, *supra* note 29 at 20 ¶ 73.

²⁹⁸ *V.M. and Others v. Belgium*, App. No. 60125/11, Eur. Ct. H. R., GC Judgment (2016).

²⁹⁹ See Practical Guide on Admissibility Criteria, *supra* note 29 at 20 ¶ 74.

³⁰⁰ *Id.* See also *Hromadka and Hromadkova V. Russia*, App. No. 22909/10, Eur. Ct. H. R., Judgment (Merits and Just Satisfaction) (2014); *Y. Y. and Y. Y. v. Russia*, App. No. 43229/18, Eur. Ct. H. R., Judgment (Merits and Just Satisfaction) (2022).

³⁰¹ *Lambert and Others v. France*, App. No. 46043/14 at ¶ 110.

³⁰² See Practical Guide on Admissibility Criteria, *supra* note 29 at 20 ¶ 75.

disability of the alleged victim(s) rendering them unable to apply, and also the relation between the person filing the application and the victim(s).³⁰³

There is not much debate about whether a natural person can bring a case on behalf of the victims. However, the Court has been quite cautious in accepting the legal standing of an association on behalf of victims, sometimes denying their *locus standi*. In ***Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania***,³⁰⁴ the Court concluded that in special circumstances, the application can be lodged by an association in the absence of the power of attorney although the victim may have died before the application was filed.³⁰⁵ This application was filed on behalf of Mr. Valentin Câmpeanu, an orphan who was an HIV patient and diagnosed with a ‘profound intellectual disability.’³⁰⁶ He was transferred to a psychiatric hospital where he did not get proper treatment, and as alleged by the applicant he died because the hospital failed to provide him with basic treatment.³⁰⁷

The association asked to be acknowledged as either an indirect victim or a representative of Mr. Valentin.³⁰⁸ It also added that since the ECtHR is flexible with its interpretation principle, it should be allowed legal standing on behalf of the victim to ensure practical and effective access to proceedings before the Court.³⁰⁹ It was noted that the application concerned a highly vulnerable man suffering from multiple disabilities and HIV infection who had no next of kin when he died.³¹⁰ The Court also concluded that the association could not be accepted as an indirect victim as it did not have any sufficient link to the victim or Mr. Valentin did not have the practical legal capacity to appoint it as his representative due to his incapacity.³¹¹

³⁰³ *Id.*

³⁰⁴ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*, App. No. 47848/08, Eur. Ct. H. R., GC Judgment (2014).

³⁰⁵ *Id.* at ¶ 112.

³⁰⁶ *Id.* at ¶ 7.

³⁰⁷ *Id.* at ¶¶ 7-12.

³⁰⁸ *Id.* at ¶ 86.

³⁰⁹ *Id.* at ¶ 87.

³¹⁰ *Id.* at ¶¶ 104, 111.

³¹¹ *Id.* at ¶¶ 107-108.

The Court concluded that this case was an ‘exceptional circumstance’ for the serious nature of the allegation that the association shall have legal standing to act as a representative.³¹²

Based on the principles of this case, the Court has accepted the legal standing of associations on behalf of direct victims, including where the victim had been able, while alive, to lodge complaints himself or herself.³¹³ However, for environmental cases, in general, environmental associations cannot claim victims of a violation of the Convention stemming from environmental disturbances or nuisances that can only be felt by natural persons.³¹⁴ The Court has also stated that an association cannot rely on health considerations to claim a violation of Article 8.³¹⁵ This situation changed after the Grand Chamber judgment on April 9, 2024, where an environmental association can be given legal standing to bring an application. (see 4.3.1 *Verein Klima Seniorinnen Schweiz and Others v. Switzerland*, pp. 68-79 for details)

³¹² *Id.* at ¶ 112.

³¹³ See *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20 at ¶ 477; *Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania*, App. No. 2959/11, Eur. Ct. H. R. Judgment (2015) at ¶¶ 42-46.

³¹⁴ See Guide to the case-law of the European Court of Human Rights- Environment, (2024), *supra* note 266 at ¶ 277.

³¹⁵ *Id.* See also *Greenpeace E.V. and Others v. Germany*, App. No. 18215/06, Eur. Ct. H. R. Decision (2009).

Chapter 4

INTERPRETING VICTIM STATUS IN CLIMATE CASES

4.1 Establishing Victim Status for Climate Litigants

As discussed in the previous chapter, the ECtHR has recognized through several decisions that failure to protect the environment by a member state may lead to the protected rights' violation by the Convention or its Protocols. It has been established that environmental harm may affect the enjoyment of human rights both directly and indirectly.³¹⁶ However, because of the multifaced challenges raised by climate change and the context being comparatively new to the Court, establishing victim status in these cases is more challenging for an applicant. These hurdles differ from any typical human rights case.

Victim status is a crucial element in determining the admissibility of a case, as it is one of the fundamental requirements for a successful outcome in favour of the applicant.³¹⁷ Applicants must provide sufficient evidence demonstrating that they have suffered or are at risk of harm due to violating the Convention or its Protocols.³¹⁸ The difficulty lies in proving a 'sufficient link' between the state's actions or omissions and the alleged human rights violations. In climate cases, showing the direct effect of climate change requires a lot of scientific evidence.³¹⁹ Moreover, its effects are ongoing and involve future risks. This makes it harder for the applicants to show a direct and clear effect on their enjoyment of rights.

It is even more difficult when applicants allege, they are potential victims of climate change effects. The obstacles for potential victimhood are greater than for cases where the impact on

³¹⁶ *Vallianatos v. Greece*, App. Nos. 29381/09 and 32684/09.

³¹⁷ ECHR, art. 34.

³¹⁸ See *Tauira v. France*, App. No. 28204/95; *Senator Lines GmbH v. Austria and Others*, App. No. 56672/00, *Centre for Legal Resources on Behalf of Valentin Câmpeanu V. Romania*, App. No. 47848/08.

³¹⁹ Jacqueline Peel & Hari M Osofsky, *Climate Change Litigation*, 16 ANNUAL REVIEW OF LAW AND SOCIAL SCIENCE 21 (2020).

victims is direct or indirect. The ECtHR has been inflexible in assessing potential victim status as it does not accept *actio popularis*. However, most of the applicants in the climate cases contend that they are potential victims of future harm that has not happened yet. This is a challenge when the applicant tries to establish something that has yet to happen.

The promising aspect is that the ECtHR has recently delivered three judgments by the Grand Chamber that discuss the victim status of the applicants of climate cases for the first time in great detail.³²⁰ Although three other climate cases were decided before by single judge and committee formations, those were summary decisions without detailed explanation of the interpretative reason.³²¹ This chapter will focus on the previous decisions of the several formations of the ECtHR on climate crisis cases and analyse how victim status in these cases was examined. The critical appraisal of the approach may provide a basis for the court's future approach to interpretation.

4.2 Single Judge and Committee Decisions

Besides the Chamber and Grand Chamber formation, the ECHR also sits in a single-judge formation and a committee of three judges formation to clear the backlog.³²² When an application is submitted, these formations decide on the admissibility first. The application may be declared inadmissible or struck out of the list of cases. If this happens, the decision of the single judge or the committee is usually final.³²³ However, if the application is deemed admissible, the single judge may forward it to a committee or a chamber.³²⁴ In some cases, the committee may decide that the petition is admissible and decide on the merits.³²⁵

³²⁰ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20; *Carême v. France*, App. No. 7189/21; *Duarte Agostinho v. Portugal and Others*, App. No. 39371/20.

³²¹ *Humane Being v. the United Kingdom*, App. No. 36959/22; *Plan B. Earth and others v. the United Kingdom*, App. No. 35057/22; *Asociacion Instituto Metabody v. Spain*, App. No. 32068/23.

³²² ECHR, art. 26(1).

³²³ *Id.* arts. 27(2), 28(2).

³²⁴ *Id.* art. 27(3).

³²⁵ *Id.* art. 28 § 1 (b).

Between 2022 and 2023, three climate change-related cases have been declared inadmissible in single-judge and committee judicial formations.³²⁶ However, such procedures of courts are non-public, and, thus, the information on the particular cases is not included in the HUDOC database.³²⁷ Furthermore, it does not provide a detailed explanation of why an application was declared inadmissible; thus, it is difficult to determine how the Court dealt with these issues of victim status in these decisions.

The first climate case ever decided in 2022 before the Court in a single-judge judicial formation is *Humane Being and others v. the United Kingdom*.³²⁸ The application was brought by an NGO against the government of the UK, alleging the failure to protect against the risks of factory farming.³²⁹ The applicant alleged that factory farming is not compatible with emission reduction commitments and responsible for the risk of millions of human deaths.³³⁰ However, the Court found the application inadmissible on the ground that the applicant was not ‘sufficiently affected’ by the alleged violation to claim to be a victim under Article 34 of the Convention.³³¹

In the same year, in a committee judicial formation, the ECtHR declared another similar application inadmissible on the same ground that the victims did not have a sufficient link to the violation. The case, *Plan B. Earth and Others v. the United Kingdom* was brought by the NGO Plan B. Earth and four individual applicants.³³² They had a similar claim that the state has failed to take ‘practical and effective measures to tackle the threat of anthropogenic

³²⁶ See Factsheet – Environment and the ECHR, *supra* note 295 at 4-5.

³²⁷ *Id.*

³²⁸ *Humane Being and others v. the United Kingdom*, App. No. 36959/22, Decision of Inadmissibility (Single Judge), Dec. 1, 2022.

³²⁹ *Humane Being v. the United Kingdom*, CLIMATE AND HUMAN RIGHTS LITIGATION DATABASE (2022), <https://climaterightsdatabase.com/2022/12/01/humane-being-v-the-united-kingdom/> (last visited Nov 10, 2024).

³³⁰ *Id.*

³³¹ *Id.*

³³² *Plan B. Earth and others v. the United Kingdom*, App. No. 35057/22, Decision of Inadmissibility (Committee of three judges), Dec. 13, 2022.

climate change.³³³ They also claimed that the domestic court rejected them the right to a fair trial.³³⁴

The third application, *Asociacion Instituto Metabody v. Spain*, brought by another NGO brought before the court, was also declared inadmissible on 5 October 2023.³³⁵ It was alleged that Spain failed to fulfil its positive obligation to take measures to safeguard against the risks of factory farming.³³⁶ Unfortunately, neither the Climate Change Factsheet nor any other source provides this case's details for a better understanding.

However, from these three applications that were rendered inadmissible, it can be seen that the ECtHR has been rigid in its approach to admitting victim status to NGOs. From the case laws of the Court, we can see that the threshold for the victim status of a legal entity such as any non-governmental organization is higher than that of individuals. (*see indirect victims under 3.2.2 pp 46-49, 3.4 representation and locus standi pp 59-61*) Moreover, the summary decisions given by these formations as an attempt to deal with the backlog of submissions are also a source of controversy in terms of how justice has not been served and its implementation under the 2017 new system.³³⁷

³³³ Plan B. Earth and Others v. the United Kingdom, CLIMATE AND HUMAN RIGHTS LITIGATION DATABASE (2022), <https://climaterightsdatabase.com/2022/12/13/plan-b-earth-and-others-v-the-united-kingdom/> (last visited Aug 22, 2024).

³³⁴ *Id.*

³³⁵ *Asociacion Instituto Metabody v. Spain*, App. No. 32068/23, Inadmissibility Decision, Oct 5, 2023.

³³⁶ *Id.*

³³⁷ Justin M. Loveland, *European Court of Human Rights Single-Judge Decisions (Still) Deny Justice and Risk Weakening UN Treaty Body System*, STRASBOURG OBSERVERS (Nov. 10, 2020), <https://strasbourgobservers.com/2020/11/10/european-court-of-human-rights-single-judge-decisions-still-deny-justice-and-risk-weakening-un-treaty-body-system/> (last visited Nov 10, 2024); Registrar of ECtHR, *Press Release: Launch of New System for Single Judge Decisions with More Detailed Reasoning*, (2017).

4.3 Grand Chamber Judgments

The Grand Chamber of the European Court of Human Rights consists of seventeen judges.³³⁸ The Grand Chamber can decide on an application when it is referred to it under Article 43 of the Convention where a serious question affecting the interpretation or application of the Convention or the Protocols is raised.³³⁹ It also provides advisory opinions on legal questions concerning the interpretation of the Convention and the Protocols according to Article 47 of the Convention or Protocol 16 of the Convention.

When there is a pending case before a Chamber involving a serious question affecting the interpretation of the Convention or the protocols, or where an answer given by a Chamber might have an inconsistent result with a previous judgment of the Court, the Chamber may relinquish jurisdiction in favour of the Grand Chamber.³⁴⁰ The judgment of the Grand Chamber is always final; there is no scope for appeal or review.³⁴¹ A detailed reasoning for the judgment and decision of admissibility or inadmissibility is given by the Grand Chamber.³⁴²

On April 9, 2024, the Grand Chamber of the ECtHR published its judgment and decisions on three cases (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*³⁴³, *Carême v. France*³⁴⁴, and *Duarte Agostinho and Others v. Portugal and 32 Other States*³⁴⁵) involving the issue of human rights violations due to climate change for the first time.³⁴⁶ The cases were decided on the same day by the same constitution of seventeen judges of the Grand Chamber. Initially, the cases were before a Chamber court. However, in 2022, the Chamber relinquished its jurisdiction over these cases and sent them to the Grand Chamber due to the

³³⁸ ECHR, art. 26(1); Rules of the Court, rule 24(1).

³³⁹ ECHR, art. 43.

³⁴⁰ ECHR, art. 30.

³⁴¹ ECHR, art. 44.

³⁴² ECHR, art. 45.

³⁴³ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20.

³⁴⁴ *Carême v. France*, App. No. 7189/21.

³⁴⁵ *Duarte Agostinho v. Portugal and Others*, App. No. 39371/20.

³⁴⁶ Factsheet - Climate Change, (2024).

significance of the issues under Article 30 of the Convention. The cases were given priority under Rule 41 of the Rules of the Court and moved up to decide. Although the decisions were given on the same day, hearings of these cases were on different days in 2023.³⁴⁷

The judgments and decisions in these three cases have been applauded by legal practitioners, scholars, and climate activists as a ‘historic’ and ‘landmark’ ruling that sets a precedent for future climate lawsuits.³⁴⁸ Although the decision in all three cases was not in favour of the applicants, the rulings reiterated the importance of access to justice in the context of climate change.³⁴⁹ Especially, the standards laid out in the Swiss case provide a ‘blueprint’ for climate activists and future applicants who are looking forward to holding their government accountable for failing to fulfil their positive obligation of securing their fundamental human rights.³⁵⁰

³⁴⁷ *KlimaSeniorinnen* (29 March), *Carême* (29 March), *Duarte Agostinho* (27 September).

³⁴⁸ Frost Rosie & Lottie Limb, *Top European Court Rules Human Rights Violated by Climate Inaction*, EURONEWS (11:30:21 +02:00), <https://www.euronews.com/green/2024/04/09/top-european-human-rights-court-could-rule-that-governments-have-to-protect-people-from-cl> (last visited Nov 10, 2024); Rosie Frost, *Swiss Women’s ECHR Victory Could Open the Door for More Legal Action*, EURO NEWS. (17:00:42 +02:00), <https://www.euronews.com/green/2024/04/10/what-does-the-echrs-landmark-ruling-mean-for-human-rights-and-climate-change> (last visited Nov 10, 2024); REMARKABLE RULING FROM THE EUROPEAN COURT OF HUMAN RIGHTS ON CLIMATE CHANGE, CBC LAW, <https://www.cbclaw.com.tr/en/remarkable-ruling-from-the-european-court-of-human-rights-on-climate-change> (last visited Nov 10, 2024).

³⁴⁹ *Id.* REMARKABLE RULING FROM THE EUROPEAN COURT OF HUMAN RIGHTS ON CLIMATE CHANGE.

³⁵⁰ *Id.* Rosie Frost, *Swiss Women’s ECHR Victory Could Open the Door for More Legal Action*, EURO NEWS.

4.3.1 Verein KlimaSeniorinnen Schweiz and Others v. Switzerland

Background

Five applicants brought this case. The first applicant is a Swiss association named Verein KlimaSeniorinnen Schweiz (applicant association). It was established to promote and implement effective climate protection on behalf of its members.³⁵¹ Founded in 2016 with only around 150 senior citizens, the association has over 2500 women of retirement age as members.³⁵² The association centres its activity on the interests of its members residing in Switzerland, the general public, and future generations to secure their climate interests.³⁵³ Before filing the application, it also solicited its members, requesting them to write down how their lives and health were affected by heatwaves.³⁵⁴

The other four applicants are individuals who are also members of the applicant association. At the time of the application, they were over 77 years old.³⁵⁵ However, the second applicant (1st individual applicant) died during the proceeding.³⁵⁶ In their written submission, the individual applicants pointed out how they had experienced health difficulties due to the increased heatwaves and how they were vulnerable due to their old age affecting their family and private lives.³⁵⁷

In 2016, the applicants submitted a complaint to the Federal Council, the Federal Department of the Environment, Transport, Energy, and Communications (DETEC).³⁵⁸ They requested the Swiss authorities to take necessary measures according to the Constitution of Switzerland and the European Convention.³⁵⁹ They claimed the current CO2 emission reduction target to

³⁵¹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 10.

³⁵² About Us, KLIMASENIORINNEN SCHWEIZ, <https://www.klimasenioren.ch/uber-uns/> (last visited Nov 10, 2024).

³⁵³ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 10.

³⁵⁴ *Id.*

³⁵⁵ *Id.* at ¶ 12.

³⁵⁶ *Id.*

³⁵⁷ *Id.* at ¶¶ 13-21.

³⁵⁸ *Id.* at ¶ 22.

³⁵⁹ *Id.* at ¶ 23.

be insufficient, unconstitutional, and incompatible with the Convention and international commitments and the mitigation measure to be insufficient.³⁶⁰ However, their application was rejected for lack of legal standing by the DETEC.³⁶¹

The applicants filed an appeal to the Federal Administrative Court (FAC) against the decision of the DETEC in 2017.³⁶² However, it was dismissed.³⁶³ It noted that the impacts of climate change on people, animals, and plants would be of general nature, and even if it is not, it would impact equally.³⁶⁴ It concluded that the applicants being a specific age group do not have sufficient interest worthy of protection to allow them to file an application.³⁶⁵ It declared the appeal inadmissible *actio popularis*.³⁶⁶

Then the case was brought before the Federal Supreme Court (FSC) in 2019.³⁶⁷ The application was dismissed on the ground that their rights were not affected with sufficient intensity by the alleged omission of the state.³⁶⁸ Moreover, their legal action was in the public interest, and it should be achieved by political means instead.³⁶⁹ Finally, in November 2020, the applicants brought Switzerland before the ECtHR. They complained of health problems exacerbated by climate change ‘significantly affecting their lives, living conditions, and well-being.’³⁷⁰ Presenting evidence that the increased global warming and heatwave have been especially vulnerable to their age group with increased mortality and serious health risk, they alleged that the Swiss authorities have failed to fulfil their positive obligation under the

³⁶⁰ *Id.* at ¶ 25.

³⁶¹ *Id.* at ¶ 28.

³⁶² *Id.* at ¶ 32.

³⁶³ *Id.* at ¶ 34.

³⁶⁴ *Id.* at ¶ 38.

³⁶⁵ *Id.* at ¶ 39.

³⁶⁶ *Id.* at ¶ 42.

³⁶⁷ *Id.* at ¶ 43.

³⁶⁸ *Id.* at ¶ 59.

³⁶⁹ *Id.* at ¶ 60.

³⁷⁰ Press Release, Violations of the European Convention for Failing to Implement Sufficient Measures to Combat Climate Change, Eur. Ct. H.R., No. ECHR 087 (2024), April 9, 2024.

Convention in the area of climate change mitigation³⁷¹ They alleged the violation of their human rights under articles 2, 6, 8, and 13 of the ECHR.

The judgment of this case can be termed the pioneer for climate cases before the ECtHR. It has set specific standards for individual victim status and *locus standi* for an association applicant in climate-based cases for the first time. While examining the complaint, the ECtHR specifically took into account diverse factors of climate change, the immediate and irreversible risks for humankind, and the positive obligation of the state regarding mitigating the effects to protect its citizens' human rights. It also considered relevant legal frameworks and practices of Switzerland, international materials including UN instruments on climate change, resolutions of the United Nations General Assembly (UNGA) and Human Rights Council (HRC), decisions of the UN human rights system, and regional and domestic precedents on climate change.

Examination of victim status

Acknowledging that victim status is one of the salient issues in climate cases, the ECtHR first examined the general principles related to the interpretation of victim status.³⁷² Then it determined the victim status of the applicants together with the applicability of the relevant provisions of the ECHR.³⁷³ While assessing the victim status of the applicants, the ECtHR examined separately the victim status of the individual applicants and the *locus standi* of the association as representatives of direct victims.

(i) *Victim status/ locus standi in relation to the violation of articles 2 and 8:*

- a. Victim status of individual applicants: The ECtHR briefly discussed that the individual applicants could claim to be a direct, indirect, or potential victim of an alleged violation in general, including environmental cases. For general cases, they need to substantiate their claim with evidence of the sufficient link between the harm and the act/omission of the state affecting them directly or their legal interest, or there is a likelihood of being

³⁷¹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶¶ 3, 64-74.

³⁷² *Id.* at ¶ 459.

³⁷³ *Id.*

affected in the future.³⁷⁴ As for environmental cases, they need to show the causation of the particular environmental damage.³⁷⁵ However, in the context of climate cases, the ECtHR has set the standard higher and stricter than environmental cases to prove the victim status of the individuals.

The Court acknowledged that the scientific evidence at hand indicates the possibility of the existence of causation between the state's measure and the harm affecting individuals.³⁷⁶ The Court found in the present context that climate change may affect an indefinite number of people, leading to a massive number of victim status claimants, undermining the exclusion of the *actio popularis* principle.³⁷⁷ This may even lead to the victim status being invalid as an admissibility requirement.³⁷⁸ Because of the special features of climate change, but also to ensure effective protection of the Conventional rights, the ECtHR held that the individual applicants need to show that they are personally and directly affected by the impugned measures of the state.³⁷⁹ The Court set out two key criteria for determining the victim status of natural persons, for which the threshold was especially high³⁸⁰ -

First, the applicant must be subject to a high intensity of exposure to the adverse effects of climate change, that is, the level and severity of (the risk of) adverse consequences of governmental action or inaction affecting the applicant must be significant; and

Second, there must be a pressing need to ensure the applicant's individual protection, owing to the absence or inadequacy of any reasonable measures to reduce harm.

³⁷⁴ *Id.* at ¶¶ 465-471.

³⁷⁵ *Id.* at ¶ 472.

³⁷⁶ *Id.* at ¶ 478.

³⁷⁷ *Id.* at ¶¶ 483-485.

³⁷⁸ *Id.* at ¶ 485.

³⁷⁹ *Id.* at ¶¶ 486-487.

³⁸⁰ *Id.* at ¶ 487.

The ECtHR stated that whether an applicant meet this high threshold will depend on the ‘careful assessment of the concrete circumstances of the case.’³⁸¹ The assessment would include: *‘prevailing local conditions and individual specificities and vulnerabilities, the nature and scope of the applicant’s Convention complaint, the actuality/remoteness and/or probability of the adverse effects of climate change in time, the specific impact on the applicant’s life, health or well-being, the magnitude and duration of the harmful effects, the scope of the risk (localised or general), and the nature of the applicant’s vulnerability.’*³⁸²

In the present case, the ECtHR first assessed the victim status of the applicants concerning the violation of Article 8, considering the criteria set for climate cases. The ECtHR analysed the factual circumstances of the applicants - the present, past, and future adverse effects of heatwaves prevailing at their places of residence and the data provided by them.³⁸³ However, the Court found that the applicants failed to substantiate that the exposure to the adverse effects of climate change on their personal lives was not to that degree of intensity to ensure their individual protection.³⁸⁴ Moreover, to claim future risk (potential victimhood), they failed to demonstrate the required exceptional circumstances.³⁸⁵ Therefore, the ECtHR decided the complaint to be inadmissible as being incompatible *ratione personae* under Article 35 § 3 of the Convention.³⁸⁶ For the same reasoning, the Court found the application inadmissible concerning the violation of Article 2 for the individual applicants.

- b. Locus standi of the association: The general principle for the victim status of an association is that it cannot claim a violation of rights under Article 8 of the Convention,

³⁸¹ *Id.* at ¶ 488.

³⁸² *Id.*

³⁸³ *Id.* at ¶¶ 528-530.

³⁸⁴ *Id.* at ¶¶ 531-533.

³⁸⁵ *Id.* at ¶ 533.

³⁸⁶ *Id.* at ¶ 535.

which only attributes to natural persons.³⁸⁷ If the measure does not affect them directly, the Court usually does not grant victim status to an NGO; only in cases acting as representatives of the victims can they be considered with ‘special considerations.’³⁸⁸ These special considerations may include representing the direct victims without specific authorization from them or even in cases on behalf of direct victims who were alive and able to apply to the Court.³⁸⁹ While considering the *locus standi* of the association in the context of climate cases, the Court recalled the observations in *Gorraiz Lizarraga and Others v. Spain*³⁹⁰ concerning the importance of recourse to collective bodies such as associations to defend individual interests in a complex issue.³⁹¹ The court expressed that climate change is a ‘common concern for humankind’ and involving intergenerational burden sharing makes it appropriate for an association to represent individual interests before the Court and that the Aarhus Convention also represented this general approach.³⁹²

The Court discussed some general principles to formulate an approach to the case where the association claimed victim status. The ECtHR emphasized the importance of distinguishing between an individual’s victim status and the legal standing of associations as representatives.³⁹³ It held that associations cannot claim to be victims of health issues caused by climate change, as natural persons encounter these exclusively.³⁹⁴ However, due to the evolution of the importance of associations for bringing climate cases on behalf of direct victims and the complex nature of climate change, the ECtHR decided to set some standards for the *locus standi* of associations in climate cases following the Aarhus Convention.³⁹⁵ Without deviating from the core principle of *actio popularis* and by

³⁸⁷ *Id.* at ¶ 473.

³⁸⁸ *Id.* at ¶ 475.

³⁸⁹ *Id.* at ¶¶ 476-477.

³⁹⁰ *Gorraiz Lizarraga and Others v. Spain*, App. No. 62543/00, Eur. Ct. H. R. Judgment (2004).

³⁹¹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 489.

³⁹² *Id.* at ¶¶ 489-491.

³⁹³ *Id.* at ¶ 496.

³⁹⁴ *Id.*

³⁹⁵ *Id.* at ¶¶ 497-500.

narrowing the broader legal standing provided by the Aarhus Convention, the ECtHR determined a set of criteria for associations to claim locus standi in climate change cases.³⁹⁶ To lodge an application under 34 of the Convention as a representative on the account of the alleged failure of the State to protect individuals against the adverse effects of climate change, the association must be-

1. *lawfully established in the jurisdiction concerned or have standing to act there,*
2. *able to demonstrate that it pursues a dedicated purpose in accordance with its statutory objectives in the defence of the human rights of its members or other affected individuals within the jurisdiction concerned, whether limited to or including collective action for the protection of those rights against the threats arising from climate change; and*
3. *able to demonstrate that it can be regarded as genuinely qualified and representative to act on behalf of members or other affected individuals within the jurisdiction who are subject to specific threats or adverse effects of climate change on their lives, health or well-being as protected under the Convention.*³⁹⁷

The ECtHR stated that other factors, including the purpose for which the association was established, its non-profit character, the nature and extent of its activities, its membership and representativeness, its principles and transparency of governance, and whether standing is in the interests of the proper administration of justice, will also be examined for determining the legal standing of an association.³⁹⁸ The Court found it was a non-profit association that was lawfully established to promote and implement effective climate protection on behalf of its members, who are senior women citizens in Switzerland.³⁹⁹ It acts to protect the interests of not only its members but also the general

³⁹⁶ *Id.* at ¶¶ 501-502.

³⁹⁷ *Id.*

³⁹⁸ *Id.*

³⁹⁹ *Id.* at ¶¶ 521-524.

public and future generations to ensure effective climate protection.⁴⁰⁰ It has also demonstrated that it is genuinely qualified and representative to act on behalf of those individuals who may claim to be subject to specific threats or adverse effects of climate change on their life, health, well-being, and quality of life as protected under the Convention.⁴⁰¹ Thus, after considering all the determining criteria, the ECtHR found that Verein KlimaSeniorinnen Schweiz has fulfilled the requirements for representing victims in the case, and Article 8 is applicable to its complaint.⁴⁰² As to the applicability of Article 2, the Court found it unnecessary to analyse further.⁴⁰³

(ii) Victim status/ locus standi in relation to the violation of article 6(1)

The threshold for claiming victim status for both individual and association applicants is not high. It is enough if they can show that they were affected as a party in the domestic proceeding.⁴⁰⁴ In this case, the respondent state did not challenge the victim status of the applicants under the procedural provisions (Articles 6 and 13) of the Convention. However, the Court joined the issue of victim status/locus standi to its assessment of the applicability of Article 6 § 1 of the Convention.

The ECtHR discussed the general principles of the right to access a court under Article 6 § 1, including the existence of a civil right, a genuine and real dispute, and the outcome being ‘directly decisive’ for the applicants.⁴⁰⁵ It observed that the general principles are applicable to the present case.⁴⁰⁶ Applying the principles, the court found that interests defended by the association meant that the ‘dispute’ raised by it had a direct and sufficient link to its members’ rights and the outcome of the proceedings had been ‘directly decisive’ for the applicant

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* at ¶ 524.

⁴⁰² *Id.* at ¶ 526.

⁴⁰³ *Id.* at ¶ 536.

⁴⁰⁴ *Id.* at ¶ 590

⁴⁰⁵ *Id.* at ¶ 610-614.

⁴⁰⁶ *Id.* at ¶ 608.

association.⁴⁰⁷ The Court, referring to its findings under Article 8, held that the applicant association also had victim status under Article 6 § 1.⁴⁰⁸

Dissenting opinion

Judge Eicke disagreed completely with the majority concerning the methodology they used to interpret victim status and its merits.⁴⁰⁹ In his own words, he took a more orthodox approach to come to a different conclusion.⁴¹⁰ He disagreed on the role of the ECtHR in the context of climate change.⁴¹¹ In his words, the ‘living instrument’ interpretive doctrine is associated with great responsibility, and the majority in this case went well beyond the permissible limits of evolutive interpretation.⁴¹²

He mentioned three major discontents with the approach of the majority that they have:

- i. *Expanded the concept of victim status/standing under Article 34 of the Convention*
- ii. *Created a new right under Article 8 and possibly under Article 2 to ‘effective protection by the state authorities from serious adverse effects on their life, health, well-being, and quality of life arising from the harmful effects and risks caused by climate change’ (§§ 519 and 544 of the Judgment), and*
- iii. *Imposed a new primary duty on Contracting Parties “to adopt, and to effectively apply in practice, regulations and measures capable of mitigating the existing and potentially irreversible future effects of climate change” (§ 545, emphasis added), covering both emissions emanating from within their territorial jurisdiction as well as “embedded emissions” (i.e. those generated*

⁴⁰⁷ *Id.* at ¶ 618-622.

⁴⁰⁸ *Id.* at ¶ 623.

⁴⁰⁹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 1 (Eicke, J., dissenting).

⁴¹⁰ *Id.*

⁴¹¹ *Id.* at ¶ 2.

⁴¹² *Id.* at ¶ 3.

*through the import of goods and their consumption), none of which have any basis in Article 8 or any other provision of or Protocol to the Convention*⁴¹³

Judge Eicke's dissent focuses on several key areas:

1. Victim status of individual applicants under Article 6(1) - Judge Eicke opined that there should not be any dispute as to the victim status of the individual applicants under Article 6(1) of the Convention because to claim to be a victim under this Article it is 'normally sufficient that the applicant was affected as a party to the proceedings brought by him or her before the domestic courts.'⁴¹⁴ He stated that the answer to the victimhood of the individual applicants in this case was obvious and believed that addressing access to the Court should have been the first issue to be discussed by the majority.⁴¹⁵ He added that since other issues were examined first, it was inevitable that only the association applicant had victim status/legal standing under Article 6(1).⁴¹⁶ He argued there is a need for a reconciled approach with the existing case-laws and the uncontested victim status of the individual applicants under Article 6.⁴¹⁷
2. Victim status under Article 2 and/or 8 – The dissenting judge disagreed with the way the majority judges have examined victim status under Articles 8 and/or 2. He took a separate approach to discuss the determining factors for victim status. He examined the general rules that the Court does not grant victim status to individual applicants in the context of environmental protection if they are not 'directly affected' in general and can produce 'reasonable and convincing evidence of the likelihood' for a potential risk'.⁴¹⁸ However, since non-governmental organizations cannot be 'directly affected', they can only be representative but cannot claim victim status under Article 8.⁴¹⁹ As for potential

⁴¹³ *Id.* at ¶ 4.

⁴¹⁴ *Id.* at ¶¶ 22, 23.

⁴¹⁵ *Id.* at ¶ 26.

⁴¹⁶ *Id.* at ¶ 27.

⁴¹⁷ *Id.* at ¶ 27.

⁴¹⁸ *Id.* at ¶¶ 30-31.

⁴¹⁹ *Id.* at ¶¶ 32-33.

victimhood, he referred to case laws requiring ‘highly exceptional circumstances’ to defer from this ‘directly affected’ criteria and accept victim status for individual applicants and representative status for NGOs.⁴²⁰ He accepted the possibility of recognizing the exception to the recognized rule ‘subject to clear conditions’.⁴²¹

He concluded that from the case reference, it would be highly unlikely for an individual to establish the degree of probability of the alleged violation by the state in the context of climate change.⁴²² In his opinion, the majority addressed the issue of victim status for individuals differently, thinking that the established victim test would not lead to the individual’s rights being unprotected.⁴²³ He opined that the court’s standard for proving ‘a real risk of direct impact’ is not different from the standard used in *Asselbourg and Others v. Luxembourg*, as the decision was based not on the impossibility of fulfilling the test but rather on the insufficiency of evidence.⁴²⁴ He expected victim status to be declared inadmissible for this part of the application rather than drawing an enforceable obligation from the current text of the Convention to combat ‘future risk’ for the applicants before the Court or even future generations who are not even there.⁴²⁵

3. Innovative legal standing for association applicant – Judge Eicke disregarded the need for an innovative standard for legal standing for association applicants in the case. He believes the majority provided a basis for *actio popularis* type complaint.⁴²⁶ He presented three reasons as to why the association applicants should not have been given legal standing:

- a) It does not have a basis in the language of Article 34 of the Convention, which requires NGOs to ‘claim to be a victim’.

⁴²⁰ *Id.* at ¶¶ 34-38.

⁴²¹ *Id.* at ¶ 39.

⁴²² *Id.* at ¶40.

⁴²³ *Id.* at ¶41.

⁴²⁴ *Id.* *Asselbourg and Others v. Luxembourg*, App. No. 29121/95, Eur. Ct. H. R. Decision (1999-VI).

⁴²⁵ *Id.* at ¶ 42.

⁴²⁶ *Id.* at ¶ 45.

- b) There is no justification to create a new right to ensure effective access to the Court by stretching the interpretation into making law.
- c) Climate change litigation is a complex issue that does not justify giving them standing independently of whether their members are victims or not.⁴²⁷

He found the standard for association applicants to be the broadest without, even being limited to protecting the rights of/representing their members.⁴²⁸ He criticised the requirements to extend the scope of association applicants' standing to the point where they can represent 'members or other affected individuals within the jurisdiction' who do not themselves need to be eligible to be a victim under Article 34 of the Convention.⁴²⁹ He also found it intriguing that the majority opted to broaden the scope under the pretext of securing access to the Court in case there is no domestic legal remedy for the applicants; however, the ECtHR can be accessed as a first instance court in such cases.⁴³⁰ The reasoning given by the majority does not apply to this particular case, as the association applicant was, in fact, given standing in the domestic court.⁴³¹

Decision

The judgment in this case was not unanimous. Out of the 17 presiding judges, Judge Eicke delivered a separate dissenting opinion. In this case, the only unanimous decisions were on the inadmissibility decision of the individual applicants' victim status under Article 8 and the violation of Article 6(1) of the Convention. As to the admissibility of the locus standi of the association applicant, the applicability and violation of Article 8; admissibility of the association applicant's locus standi, and inadmissibility of the individual applicants' victim

⁴²⁷ *Id.* at ¶ 44.

⁴²⁸ *Id.* at ¶ 45.

⁴²⁹ *Id.*

⁴³⁰ *Id.* at ¶ 48.

⁴³¹ *Id.*

status, the ratio was (16-1) as the dissenting judge provided distinctive reasoning for a different conclusion.

4.3.2 *Carême v. France*

Background

This is the second climate change case heard by the Grand Chamber of the ECtHR after *KlimaSeniorinnen*. The application was filed by Mr. Damien Carême, a politician who served as the mayor of Grande-Synthe from 2001 to 2019.⁴³² Because of its location, Grande-Synthe is exposed to risks linked to climate change, including the risk of flooding.⁴³³ Mr. Carême, on his own behalf as well as in the capacity of the mayor of the municipality, requested the President of the Republic, the Prime Minister, and the Minister for Ecological Transition and Solidarity to take necessary steps to reduce GHG emissions, to take legislative and regulatory steps to prioritize climate-related issues, and to implement the adaptation measures immediately.⁴³⁴

Unable to get a response from them, in the same capacity, he applied for a judicial review of the implicit rejection decisions constituted by the authorities' failure to reply to their requests to the *Conseil d'État*⁴³⁵ in 2019.⁴³⁶ Meanwhile, in May 2019, Mr. Carême was elected to the European Parliament and moved from Grande-Synthe to Brussels.⁴³⁷ He claimed that since the geological location of the municipality leaves it more exposed to the risks of climate change, the government should fulfil its positive obligation by addressing the issue and taking effective measures.⁴³⁸ The *Conseil d'État* found his request to order the authorities to take necessary legislative initiatives to tackle climate change to raise the issue of separation of

⁴³² *Carême v. France*, App. No. 7189/21 at ¶ 9.

⁴³³ *Id.*

⁴³⁴ *Id.* at ¶ 11.

⁴³⁵ Council of State, France. It is a governmental body acting both as legal adviser to the executive branch and as the supreme court for administrative justice.

⁴³⁶ *Carême v. France*, App. No. 7189/21 at ¶ 13.

⁴³⁷ *Id.* at ¶ 9.

⁴³⁸ *Id.* at ¶¶ 15-17.

powers and thus not amenable to judicial review.⁴³⁹ However, the request to regulate GHG emissions, prioritize climate change, and take adaptation measures was found fit for a judicial review.⁴⁴⁰

Regarding the claimants' interest in bringing the case, the *Conseil d'État* distinguished between the municipality and the applicant.⁴⁴¹ Due to the level of exposure to the risks and impact of climate change on Grande-Synthe, the municipality was found to have an interest in bringing the case.⁴⁴² However, the *Conseil d'État* determined that Mr. Carême lacked interest in bringing the proceeding on his own behalf.⁴⁴³ Therefore, the authorities were ordered to take additional measures to meet the GHG emission reduction target by March 2022.⁴⁴⁴ Subsequently, the municipality started a legal action in this regard, and the *Conseil* ruled in its favour.⁴⁴⁵

Therefore, in January 2021, he applied to the ECtHR, alleging that France has failed to fulfil its positive obligation to prevent climate change violating his rights under Articles 2 and 8 of the Convention, putting his home in the municipality of Grande-Synthe at risk of climate-change-induced flooding.⁴⁴⁶ On May 2022, the application was relinquished by the Chamber, to which it was allocated in favour of the Grand Chamber.⁴⁴⁷ The Grand Chamber heard the case on 29 March 2023 and delivered the inadmissible decision on April 9, 2024.⁴⁴⁸

⁴³⁹ *Id.* at ¶ 26.

⁴⁴⁰ *Id.* at ¶ 27.

⁴⁴¹ *Id.* at ¶ 28.

⁴⁴² *Id.*

⁴⁴³ *Id.*

⁴⁴⁴ *Id.* at ¶ 36.

⁴⁴⁵ *Id.* at ¶¶ 37-38.

⁴⁴⁶ *Id.* at ¶ 56.

⁴⁴⁷ Press Release- Grand Chamber hearing concerning combat against climate change, (2023).

⁴⁴⁸ *Id.* Factsheet - Climate Change, *supra* note 346.

Examination of victim status

The application was decided unanimously to be inadmissible for being incompatible *ratione personae*. The Grand Chamber delivered quite a short decision, referring to the standards set in *KlimaSeniorinnen* and applying those in the present case. It took a notably restrictive approach to interpreting the applicant's victim status. It examined the general principles of individual applicants' victim status under Article 34 alleging violation of Articles 2 and 8 of the Convention due to climate change.⁴⁴⁹ The Court did not address all the arguments of the respondent but rather started the assessment with specific reasons for its decision.

The relevant circumstances of the applicant were first examined according to the standards. It first examined the question of the nature of the risk relating to climate change affecting the applicant. The applicant claimed that he based his complaint in the domestic jurisdiction based on the local circumstances prevailing in the area in which the municipality of Grande-Synthe is located.⁴⁵⁰ He asserted that the house in which he resided was situated less than four kilometres from the coastline and that according to some predictions it would be flooded by 2040, considering the effects of climate change.⁴⁵¹ He added that he had not lodged the legal action as an ordinary citizen but as someone with a concrete legal interest, since in the foreseeable future, his house was at real risk of flooding linked to climate change, which would therefore affect his property and his day-to-day environment.⁴⁵²

The *Conseil d'État* found the relevant area to be at high risk of increased natural calamities due to climate change but no concrete evidence of the applicant's interest to be affected in the present, let alone in the next twenty years or so.⁴⁵³ Therefore, the ECtHR did not question the nature of risk in the municipality.⁴⁵⁴ However, the Court did focus on the fact that the

⁴⁴⁹ *Id.* at ¶ 76.

⁴⁵⁰ *Id.* at ¶ 77.

⁴⁵¹ *Id.*

⁴⁵² *Id.*

⁴⁵³ *Id.* at ¶ 79.

⁴⁵⁴ *Id.* at ¶ 80.

applicant no longer resided in that municipality and analysed his victim status in that particular context.

The Court opted to find whether the risk in the municipality of Grande-Synthe would anyway affect the private and family life of the applicant in the current circumstances. As stated by the applicant in the hearing, he no longer resides in Grande-Synthe but in a different country.⁴⁵⁵ He does not even own or rent any property there.⁴⁵⁶ Furthermore, he indicated his address in Grande-Synthe while lodging the application, although he no longer resided there at that time, contrasting the arguments raised in his application.⁴⁵⁷ The only link he tried to show is that after serving his mandate he would return there, where his brother is currently living.⁴⁵⁸ The court argued that according to its well-established case law if they can demonstrate additional elements of dependence – which is not the case in the present case – adult siblings cannot depend on the family-life aspect of Article 8.⁴⁵⁹

Considering the fact that the applicant did not have sufficient links to Grande-Synthe and currently did not reside there, the Court concluded that the applicant cannot claim to have victim status under Article 34 of the Convention as regards the alleged risks linked to climate change threatening that municipality under any potential aspect of Article 8 of the Convention.⁴⁶⁰ He did not have victim status irrespective of the status he invoked, that of a citizen or a former resident of that municipality.⁴⁶¹ The same was true for his victim status under Article 2 of the ECHR.⁴⁶²

Moreover, as the mayor or the former mayor, the applicant does not have legal standing to bring an application since, through established case-laws, the ECtHR has considered any government authorities to not have legal standing as a legal person under Article 34 of the

⁴⁵⁵ *Id.* at ¶ 68.

⁴⁵⁶ *Id.*

⁴⁵⁷ *Id.* at ¶ 82.

⁴⁵⁸ *Id.* at ¶ 68.

⁴⁵⁹ *Id.* at ¶ 81.

⁴⁶⁰ *Id.* at ¶ 83.

⁴⁶¹ *Id.*

⁴⁶² *Id.*

Convention.⁴⁶³ The Court also took note of the fact that the interests of the residents of Grand-Synthe have already been defended by their municipality in the domestic proceedings.⁴⁶⁴

Decision

The application was declared inadmissible under Article 35 § 3 of the Convention.⁴⁶⁵ The applicant did not have victim status on his own behalf or as the mayor of the grand-Synthe municipality.

4.3.3 Duarte Agostinho and Others v. Portugal and 32 Other State

Background

Among the trio, this is the first climate-related case to be brought before the ECtHR. Six Portuguese young nationals living in Portugal brought Portugal and 32 other countries⁴⁶⁶ to the ECtHR in September 2020. They claimed to be exposed to the risk of harm from climate change and that it would increase over time, affecting future generations too.⁴⁶⁷ Thus, they alleged that the respondent states have failed to fulfil their positive obligation under Articles 2, 3, 8, and 13 of the Convention because of the existing and future impacts of climate change concerning heatwaves, wildfires, and smoke from wildfires that affected their lives, well-being, mental health, and the amenities of their homes.⁴⁶⁸

⁴⁶³ *Id.* at ¶ 85.

⁴⁶⁴ *Id.* at ¶ 86.

⁴⁶⁵ *Id.* at ¶ 88.

⁴⁶⁶ The Republic of Austria, the Kingdom of Belgium, the Republic of Bulgaria, the Swiss Confederation, the Republic of Cyprus, the Czech Republic, the Federal Republic of Germany, the Kingdom of Denmark, the Kingdom of Spain, the Republic of Estonia, the Republic of Finland, the French Republic, the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic, the Republic of Croatia, Hungary, Ireland, the Italian Republic, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Latvia, the Republic of Malta, the Kingdom of the Netherlands, the Kingdom of Norway, the Republic of Poland, Romania, the Russian Federation, the Slovak Republic, the Republic of Slovenia, the Kingdom of Sweden, the Republic of Türkiye and Ukraine.

⁴⁶⁷ *Duarte Agostinho v. Portugal and Others*, App. No. 39371/20 at ¶ 14.

⁴⁶⁸ *Id.* at ¶ 3.

In their submissions, the applicants stated they were not directly affected by the mentioned forest fire due to the heatwaves.⁴⁶⁹ However, they faced psychological trauma and health issues and were at risk of future return of health problems if the situation kept going this way due to the forest fire because of heatwaves.⁴⁷⁰ The applicants claimed to be ‘actual victims’ who were directly affected by the respondent states’ violations.⁴⁷¹ They also claimed to be potentially affected in the future as a vulnerable group of individuals.⁴⁷² The respondent states counter-argued that the applicants could not demonstrate ‘a sufficiently direct causal link between the actions or omissions of the respondent states regarding climate change and the harm or damage they alleged.’⁴⁷³

The applicants submitted their application to the ECtHR without exhausting any domestic remedies, which became a contentious issue in evaluating the application. They argued that this is because there were no effective remedies available in the domestic courts or their situation came under ‘special circumstances’ absolving them from the requirement of exhausting domestic remedies.⁴⁷⁴ The ECtHR’s jurisdiction concerning the respondent states was also debated. After assessing the preliminary issue of the application against Ukraine and Russia the Grand Chamber assessed the case on three grounds: jurisdiction of the court, exhaustion of domestic remedies, and the victim status of the applicants.

Examination of ECtHR’s jurisdiction

In its introductory remarks on the legal issues before the Court, affirming that the general consideration on climate change issues discussed in the Swiss case does guide for climate issues up to a certain point, the Court states that there are different legal issues addressed in climate cases and environmental cases that require case-specific assessment.⁴⁷⁵ As the applicants argued that their allegation concerned climate change they were within the

⁴⁶⁹ *Id.* at ¶¶ 12-23.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.* at ¶ 135.

⁴⁷² *Id.*

⁴⁷³ *Id.* at ¶ 89.

⁴⁷⁴ *Id.* at ¶ 128.

⁴⁷⁵ *Id.* at ¶ 165.

jurisdiction of all the respondent states within the meaning of Article 1 of the Convention, the Court decided to assess the issue of jurisdiction first.⁴⁷⁶

Referring to the general principles summarized in *M.N. and Others v. Belgium*,⁴⁷⁷ the Court reiterated that the jurisdiction of a state is primarily territorial, and an exception to the principle is limited to the situation when the state exerts ‘effective control’ over an area outside its territory.⁴⁷⁸ The Court observed that a decision taken on a national level affecting residents abroad does not extend its jurisdiction outside of its territory.⁴⁷⁹ To determine whether the Convention applies or not, the Court needed to examine ‘special circumstances’ which is a statement of fact and varies from case to case.⁴⁸⁰

The ECtHR concluded that for Portugal, since all the applicants were residing in its territorial jurisdiction, there is no doubt as to the application of Article 1 of the Convention.⁴⁸¹ Regarding other respondent states, the applicants did not argue, nor can there be any basis that they would fall under their territorial jurisdiction.⁴⁸² As the applicants argued the principle of extraterritorial jurisdiction applies to them for other respondent states, the Court examined the exceptional principle in the context of this case.⁴⁸³ To apply this exception, the respondent should have effective control outside its territory, bringing applicants within its jurisdiction, which was absent in this case.⁴⁸⁴ Furthermore, respondent states did not exercise authority or control over the applicants, nor were there any special circumstances to establish such jurisdiction.⁴⁸⁵

⁴⁷⁶ *Id.* at ¶¶ 166-167.

⁴⁷⁷ *M.N. and Others v. Belgium*, App. No. 3599/18, Eur. Ct. H. R., GC decision (2020) at ¶¶ 96-109.

⁴⁷⁸ *Duarte Agostinho v. Portugal and Others*, App. No. 39371/20 at ¶ 168.

⁴⁷⁹ *Id.* at ¶ 169.

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.* at ¶ 178.

⁴⁸² *Id.* at ¶ 179.

⁴⁸³ *Id.* at ¶ 180.

⁴⁸⁴ *Id.* at ¶ 181.

⁴⁸⁵ *Id.* at ¶¶ 182-84.

The Court also rejected the applicants' argument of the existence of 'exceptional circumstances' finding no connection between the applicants and respondent states.⁴⁸⁶ The ECtHR held that the scope of extraterritorial jurisdiction sought by the applicants would make it unlimited, leading to an 'untenable uncertainty for the states.'⁴⁸⁷ This would also make an unlimited expansion of the jurisdiction, which does not conform to the foundation of the Convention.⁴⁸⁸ Considering the presented evidence, the Court concluded that there were no grounds in the Convention for the extension, by way of judicial interpretation, of the respondent states' extraterritorial jurisdiction as requested by the applicants.⁴⁸⁹

Examination of exhaustion of domestic remedies

The Court observed that since the complaint was found to be inadmissible for other respondent states except Portugal on the ground that the applicants are not within the jurisdiction of those states, the issue of domestic remedy only applies to Portugal.⁴⁹⁰ While considering the exhaustion of domestic remedies in relation to Portugal, the Court assessed the availability of effective remedies.⁴⁹¹ The applicants argued that the mere existence of a constitutional provision could not provide for an effective and sufficiently certain remedy.⁴⁹² They also challenged the effective use of any possible domestic remedies.⁴⁹³

The Court did not accept these arguments.⁴⁹⁴ The Court noted that there was explicit constitutional recognition of the right to a healthy environment under Article 66 of the Constitution of Portugal.⁴⁹⁵ It was also directly applicable and enforceable by the domestic

⁴⁸⁶ *Id.* at ¶199.

⁴⁸⁷ *Id.* at ¶208.

⁴⁸⁸ *Id.*

⁴⁸⁹ *Id.* at ¶213.

⁴⁹⁰ *Id.* at ¶216.

⁴⁹¹ *Id.*

⁴⁹² *Id.* at ¶217.

⁴⁹³ *Id.*

⁴⁹⁴ *Id.* at ¶218.

⁴⁹⁵ *Constitution of the Portuguese Republic*, art. 66, 1976 (as amended 2005), available at https://www.constituteproject.org/constitution/Portugal_2005 (last visited Nov 10, 2024).

courts.⁴⁹⁶ The Portuguese legal system provides for constitutional, administrative, and civil liability compensation as a remedy.⁴⁹⁷ Moreover, it provides mechanisms to overcome the parties' lack of means for legal representation and effective remedies for the excessive length of proceedings.⁴⁹⁸ Thus, the Court could not find any special reason to exempt the applicant from the exhaustion of the domestic remedy requirement.⁴⁹⁹

Examination of victim status

The Court found a sufficient lack of clarity regarding the applicants' victim status, making it difficult to examine the criteria set out in *KlimaSeniorinnen*.⁵⁰⁰ The Court notes that this clarity could have been explained had the applicants first proceeded with the domestic proceedings before coming to the ECtHR.⁵⁰¹ Due to this, the Court did not examine the criteria for victim status in detail as the application was already inadmissible on two grounds of the admissibility criteria.

Decision

The Court concluded that territorial jurisdiction is only established in respect of Portugal, whereas no jurisdiction can be established as regards the other respondent states.⁵⁰² It also found the applicants' complaint against Portugal to be inadmissible for non-exhaustion of domestic remedies and rejected the application under Article 35 §§ 1 and 4 of the Convention.⁵⁰³ As the application was inadmissible on the grounds of jurisdiction and exhaustion of domestic remedies, the requirement of victim status was not examined. The decision was unanimous.

⁴⁹⁶ *Id.* at ¶ 219.

⁴⁹⁷ *Id.* at ¶¶ 219-225.

⁴⁹⁸ *Id.* at ¶ 225.

⁴⁹⁹ *Id.* at ¶ 225.

⁵⁰⁰ *Id.* at ¶ 229.

⁵⁰¹ *Id.* at ¶ 230.

⁵⁰² *Id.* at ¶ 214.

⁵⁰³ *Id.* at ¶ 227.

4.4 Critical Appraisal of the Three Grand Chamber Decisions

The Grand Chamber's decisions on the latest climate cases raised novel questions regarding climate change and human rights. There were a good few areas where the ECtHR discussed elaborately assessing the issues in a pertinently new and developing context of climate change. Issues including the victim status of applicants, the scope of the positive obligation of states, the rule of extraterritorial jurisdiction, and several human rights' scope in the context of climate change were examined, setting standards for future climate change cases before the ECtHR.

The Court adopted a pioneering and practical approach to establishing a legal standard for individual and association applicants alleging human rights violations originating from climate change. Since there were no elaborate rulings on this particular issue, these observations would work as the stepping stones for both climate activists and states.⁵⁰⁴ It would guide states to regulate their climate adaptation and mitigation approach, whereas applicants now have a specific list of criteria that need to be met before they move to the ECtHR. According to experts, these trio of cases are expected to be the most impactful rulings on climate change and human rights to hold the states' accountable.⁵⁰⁵

4.4.1 Swiss Senior Women Case

This case has been regarded as having a moderate success for the applicants.⁵⁰⁶ However, taken together with the other cases, it can be regarded as a breakthrough in addressing climate justice.⁵⁰⁷ This particular judgment may have the potential to exert influence over national, regional, and international pending climate cases.⁵⁰⁸ The way the ECtHR has acknowledged

⁵⁰⁴ Frost, *supra* note 348.

⁵⁰⁵ *Id.*

⁵⁰⁶ Lea Raible, *Priorities for Climate Litigation at the European Court of Human Rights*, EJIL: TALK! (May 2, 2024), <https://www.ejiltalk.org/priorities-for-climate-litigation-at-the-european-court-of-human-rights/> (last visited Nov 15, 2024).

⁵⁰⁷ *Id.*

⁵⁰⁸ Richard Manfredi, *European Court of Human Rights Rules on the Positive Obligations of Convention States in the Face of the Climate Crisis – Key Takeaways*, GIBSON DUNN (2024),

the real risk of climate change on the enjoyment of human rights under the Convention is much appreciated. It has also reiterated its authority as a subsidiary to the domestic legal proceedings, focusing on the importance of the domestic role.⁵⁰⁹ However, the crux of this judgment is the detailed analysis and setting standards for determining the victim status of individual and association applicants. For the first time, this case sets specific rules for victim status in the context of climate change. It has separately given the criteria for individual applicants and association applicants.⁵¹⁰

While setting the standard for the victim status of individual applicants, the court has taken quite a progressive yet cautious approach. Cautious in its adherence to the general principles of victim status and progressive in interpreting these principles in the context of climate change. It took a balanced approach to setting these criteria. The standard for individual victim status laid down by the Court is quite restrictive when it requires the victims to have ‘high intensity of exposure to the adverse effects of climate change.’ I agree with the opinion of the dissenting judge that this high threshold is quite impossible for individual applicants to demonstrate.⁵¹¹ Because this way, the standard makes human rights protection at the ECtHR less available.⁵¹²

Although the Court reasoned this was to prevent *actio popularis*, these high thresholds, in addition to the general requirement for victim status, make it challenging for individual applicants to substantiate their claim. The Court could have elaborated more on what ‘high intensity of exposure’ means and to what extent the individual needs to be protected to satisfy the second criterion. Moreover, the Court did not elaborate more on the exceptional circumstances of potential victimhood in the present case. Environmental harm due to climate change mostly incorporates higher risk in the future. This was a wonderful opportunity for

<https://www.gibsondunn.com/european-court-of-human-rights-rules-on-positive-obligations-of-convention-states-in-the-face-of-climate-crisis-key-takeaways/> (last visited Nov 15, 2024).

⁵⁰⁹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 412.

⁵¹⁰ *Id.* at ¶¶ 487-488, 502.

⁵¹¹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 40 (Eicke, J., dissenting).

⁵¹² Raible, *supra* note 506.

the Court to take a guiding role by examining this issue in the judgment. However, this was absent.

In contrast, the flexible and evolving interpretation of the *locus standi* for the association applicants has received mixed reactions. The integration of the Aarhus Convention, similar to *Klimaatzaak*⁵¹³ was a step taken at the right time. The Court acknowledged a greater possibility of environmental associations bringing climate cases before it in the future; therefore, it stated that there was a pressing need to establish a standard for representation in climate-related cases. Although the inclusion of international standards is insightful, the question may arise as to why the Court has not just lowered the threshold for the individuals so that there will be a possibility for both types of applicants to ensure access to justice.⁵¹⁴

The most innovative is not that associations have standing on their own now; rather, they may have standing even if those whom they represent do not meet the strict victim status criteria set for individual applicants; this sets an extremely low bar for standing.⁵¹⁵ This though remedied the strict standard for individuals, but it is not helpful where the standing rule is strict for NGO applicants in domestic jurisdictions.⁵¹⁶ Moreover, Judge Eicke is quite right when he mentioned that the court did exactly what it wanted to avoid, a basis for the

⁵¹³ *Klimaatzaak ASBL v. Belgium*, Brussels Court of Appeal, Case No. 2021/AR/1589.

⁵¹⁴ Not Just Another ECtHR Judgment: Analysis of *KlimaSeniorinnen Schweiz v Switzerland* (Part 1 of 3), CLIMATE AND HUMAN RIGHTS LITIGATION DATABASE (2024), <https://climaterightsdatabase.com/2024/04/18/not-just-another-ecthr-judgment-analysis-of-klimaseniorinnen-schweiz-v-switzerland-part-1-of-3/> (last visited Nov 15, 2024).

⁵¹⁵ Jeremy Letwin, *Klimaseniorinnen: The Innovative and the Orthodox*, EJIL: TALK! (Apr. 17, 2024), <https://www.ejiltalk.org/klimaseniorinnen-the-innovative-and-the-orthodox/> (last visited Nov 15, 2024).

⁵¹⁶ Raible, *supra* note 506.

actio popularis complaint.⁵¹⁷ In reality, the court created a ‘loophole’ for associations to bypass all ordinary rules on victim status.⁵¹⁸

Apart from the interpretation of the victim status of the applicants, how the Court interpreted the positive obligation and margin of appreciation of the respondent state is also worth mentioning. For the context of climate change, the scope of the positive obligation to the state’s commitment to combating climate change, its adverse effects, and the setting of aims and objectives in this respect laid down by the Court was quite broad.⁵¹⁹ Conversely, the margin of appreciation for how the state would take the measures to achieve those objectives was addressed narrowly.⁵²⁰

The duty imposed on the state to adopt a regulatory framework for climate change mitigation and to enforce that on time is quite burdensome.⁵²¹ It also expects a state to have a carbon reduction budget and achieve that within a time frame that is to be set by it.⁵²² Though this may stimulate more proactive climate policies and pave the way for additional legal challenges when states fail to fulfil their climate commitments, whether the states are going to adopt that framework is a big question.

⁵¹⁷ Letwin, *supra* note 515; Christoph H. Seibt Tursic Juliane Hilf, Moritz Becker, Patrick Schroeder, Carsten Wendler, Jan Henning Buschfeld, Stefanie Spancken-Monz, Marlen Vesper-Gräske, Domen, *Climate Change and Human Rights: A New Chapter for States, NGOs, and Businesses?*, PASSLE (2024), <https://sustainability.freshfields.com/post/102j5yc/climate-change-and-human-rights-a-new-chapter-for-states-ngos-and-businesses> (last visited Nov 15, 2024).

⁵¹⁸ *Id.*

⁵¹⁹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶543.

⁵²⁰ *Id.*

⁵²¹ Rydberg, *supra* note 9 at 361.

⁵²² Corina Heri, *Strasbourg’s “Case of the Century” – Revolutionary Climate Judgment from the European Court of Human Rights*, JUST SECURITY (2024), <https://www.justsecurity.org/94489/revolutionary-climate-judgment/> (last visited Nov 15, 2024).

4.4.2 French Case

The decision was more of a straightforward approach to victim status, irrespective of the context.⁵²³ The Court did not take a restrictive or flexible approach. It is apparently a textbook approach where a sufficient link between the alleged victim and the alleged harm was not found. The Court did not need to consider the standards set in the Swiss case because the applicant, Mr. Carême, failed to fulfil the most basic requirement of victim status- to show that he was directly and personally affected by the alleged violation.⁵²⁴

It was rightly found by the court that the applicant did not demonstrate any sufficient link to acknowledge him as a potential victim. The scholars and legal experts do not question this predictable decision. Highlighting the traditional adherence to the importance of a direct and sufficient link between the applicant and the alleged violation to prove victim status, particularly in environmental cases, the decision is well under the general approach of the Court.

4.4.3 Portuguese Youth Case

This decision was quite disappointing yet predictable.⁵²⁵ The case was dismissed because the ECtHR did not want to accept the extra-territoriality jurisdiction principle, and the applicants did not take recourse to any legal avenue in Portugal or any of the respondent countries. The most criticized aspect of this case is the Court's approach to interpreting the extraterritorial jurisdiction of the respondent states. Although the applicants claimed the global nature and extraterritorial effects of climate change, the Court was hesitant to broaden the territorial jurisdiction of the respondent states, justifying its decision by claiming it would create uncertainty as to the state's jurisdiction in future cases. By refusing to expand the jurisdiction

⁵²³ Marko Milanovic, *A Quick Take on the European Court's Climate Change Judgments*, EJIL: TALK! (Apr. 9, 2024), <https://www.ejiltalk.org/a-quick-take-on-the-european-courts-climate-change-judgments/> (last visited Nov 15, 2024).

⁵²⁴ *Vallianatos v. Greece*, App. Nos. 29381/09 and 32684/09.

⁵²⁵ Milanovic, *supra* note 523.

in the climate change context, the Court confirmed its existing jurisprudence on extraterritorial jurisdiction.⁵²⁶

Climate change is complex and global. The ECtHR failed to contemplate this global impact on the applicants. The Court could have taken a less restrictive approach by incorporating the international environmental principle of ‘shared but differentiated responsibility’ when it comes to mitigating the effects of climate change. As we have seen in *Neubauer*⁵²⁷ (see heading 2.3.1, pp 16-18) and *Urgenda*,⁵²⁸ (see heading 2.3.2, pp 20-23) the domestic courts took into account the transboundary nature of climate change and acknowledged that every state needs to do its share and bear the burden together for the future generation.⁵²⁹

Also, in its Advisory Opinion,⁵³⁰ the IACtHR took a flexible approach considering the transboundary nature of environmental harm and admitted that jurisdiction should not be limited by strict territorial concepts in the context of climate change. (see heading 2.4.1, pp 28-29). It broadened the interpretation of extraterritorial jurisdiction by reasoning that jurisdiction can be established when a state ‘exercises effective control over the activities carried out [in another state] that caused the harm and consequent violation of human rights’ in the other state.⁵³¹ This approach was also endorsed by the CRC in *Sacchi*.⁵³² However, the Court rejected to incorporate this approach by stating that these are based on different notions of jurisdiction, which are not recognized by it.⁵³³

⁵²⁶ Manfredi, *supra* note 508.

⁵²⁷ *Neubauer v. Germany*, BVerfG, Nos. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20.

⁵²⁸ *The State of the Netherlands v. Stichting Urgenda*, Hoge Raad [HR] [Supreme Court of the Netherlands].

⁵²⁹ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶¶ 254, 260.

⁵³⁰ Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23.

⁵³¹ *Id.* Melanie Murcott, Maria Antonia Tigre & Nesa Zimmermann, *What the ECtHR Could Learn from Courts in the Global South*, VERFASSUNGSBLOG (2022), <https://verfassungsblog.de/what-the-ecthr-could-learn-from-courts-in-the-global-south/> (last visited Nov 15, 2024).

⁵³² *Sacchi v. Argentina*, U.N. Committee on the Rights of the Child, Comm. No. 104/2019, U.N. Doc. CRC/C/88/D/104/2019.

⁵³³ *Duarte Agostinho and Others v. Portugal and Others*, App. No. 39371/20 at ¶ 212.

However, the decision on the inadmissibility of the exhaustion of domestic remedies did not come as a surprise. The Court stuck to its traditional approach. This approach has been applauded as not opening the floodgates for other cases.⁵³⁴ However, considering children are vulnerable and the most affected while contributing less, the Court could set standards for exceptional situations for vulnerable sections of society. It could have taken inspiration from the way the CRC in *Sacchi*⁵³⁵ emphasized the responsibility of states to protect their future generations in exceptional circumstances and accepted the case, although the applicants did not exhaust domestic remedies based on urgency and delayed justice.



⁵³⁴ Milanovic, *supra* note 523.

⁵³⁵ *Sacchi v. Argentina*, U.N. Committee on the Rights of the Child, Comm. No. 104/2019, U.N. Doc. CRC/C/88/D/104/2019.

Chapter 5

FUTURE PROSPECTS FOR CLIMATE CASES

5.1 Adjourned Cases before the ECtHR

Currently, there are seven⁵³⁶ cases adjourned before the ECtHR. These cases are brought by individual and NGO applicants alleging violation of Articles 2, 6, 8, 13, and 14 of the Convention.⁵³⁷ The ECtHR adjourned these cases until the delivery of decisions in *Klima Seniorinnen*, *Carême*, and *Duarte Agostinho*. Since the ECtHR has already decided on the relinquished cases by priority, it is expected the proceeding for these cases will soon start. The recent Grand Chamber decisions can function as a lighthouse for interpreting the issues in the adjourned cases, as these adjourned cases surely will include questions such as the victim status of individual and association applicants.

As we already have standards set for victim status, exhaustion of domestic remedies, territorial jurisdiction, state obligation, and duty of care requirements in the context of climate change, everyone is expecting how the ECtHR decides these cases. For example, the facts of *Uricchiov v. Italy*,⁵³⁸ *De Conto v. Italy*,⁵³⁹ and *Soubeste v. Austria*⁵⁴⁰ are set on the same premise as the Portuguese youth case, where the question of extraterritoriality would be examined, as these are filed against multiple respondent states. Furthermore, individual

⁵³⁶ *Uricchiov v. Italy and 31 Other States*, App. No. 14615/21 and *De Conto v. Italy and 32 Other States*, App. No. 14620/21; *Müllner v. Austria*, App. No. 18859/21; *Greenpeace Nordic and Others v. Norway*, App. No. 34068/21; *The Norwegian Grandparents' Climate Campaign and Others v. Norway*, App. No. 19026/21; *Soubeste and four other applications v. Austria and 11 Other States*, App. Nos. 31925/22, 31932/22, 31938/22, 31943/22 and 31947/22; *Engels v. Germany*, App. No. 46906/22.

⁵³⁷ Factsheet - Climate Change, *supra* note 346.

⁵³⁸ App. No. 14615/21.

⁵³⁹ App. No. 14620/21.

⁵⁴⁰ App. Nos. 31925/22, 31932/22, 31938/22, 31943/22 and 31947/22.

victim status will be examined in *Müllner v. Austria*⁵⁴¹ and *Engels v. Germany*⁵⁴², whereas in *Greenpeace Nordic V. Norway*⁵⁴³ and *The Norwegian Grandparents v. Norway*⁵⁴⁴ association victim status will be an issue. Moreover, the Grand Chamber cases focused on the applicability of Article 8 of the Convention in the context of climate change. These pending cases may bring elaborate observations on the applicability of especially Articles 3, 13, and 14 of the Convention.

Although two of the three decisions were inadmissible, this does not signify the conclusion of climate litigation before the ECtHR. Rather, it shows the growing urgency of climate change, and that the ECtHR is willing to delve into deeper discussion to accommodate the new context. Depending on the specific facts of these cases, the ECtHR might interpret the issues either broadly or narrowly. For that, we need to wait. We might have a consistent jurisprudence on climate cases before the ECtHR after these cases are also decided.

5.2 Compliance Mechanisms and State Responses Post-Grand Chamber Rulings

The enforcement and implementation of the judgments play a vital role. The enforcement methods on the domestic level are without any doubt effective. When it comes to the decisions of the regional and international courts, although the decisions might be binding, overseeing whether the state is fulfilling its obligations is not so practical. It has been almost a year since these much-desired decisions were made. According to the ECHR, the judgments are binding on the states.⁵⁴⁵ When the final judgment is transmitted to the Committee of Ministers (CoM), it supervises whether the state executes the judgment.⁵⁴⁶

⁵⁴¹ App. No. 18859/21.

⁵⁴² App. No. 46906/22.

⁵⁴³ App. No. 34068/21.

⁵⁴⁴ App. No. 19026/21.

⁵⁴⁵ ECHR, art. 46.

⁵⁴⁶ ECHR, art. 46 (2).

However, if the state refuses to adhere to the judgment, by a two-thirds majority vote, the CoM will serve a formal notice and refer to the Court the question of whether that member state has failed to fulfil its obligation.⁵⁴⁷ This infringement procedure has been used ‘very rarely.’⁵⁴⁸ When the court finds a violation again under Article 46, it refers the case to the CoM to take appropriate measures. These infringement proceedings do not penalise the state; rather, it is to put political pressure to secure the initial judgment’s execution and to increase the efficiency of the supervisory proceeding.⁵⁴⁹

For this reason, cooperation between states and their willingness to comply play a major role in upholding human rights. The reactions for the climate cases before the Grand Chamber reiterate this position. In the Swiss case, apart from reimbursing the costs and expenses by the applicant, the state was also ordered to introduce new legislation specifying concrete climate mitigation measures and a carbon budget.⁵⁵⁰ However, the decision was not welcomed.

The Swiss government rejected the judgment, stating it as ‘an embarrassment’ for Switzerland.⁵⁵¹ The Swiss Parliament expressed its disagreement with the judgment by a non-binding motion issued on 12 June 2024.⁵⁵² Furthermore, the right-wing Swiss People’s Party demanded Switzerland leave the Council of Europe, accusing the court of overstepping its

⁵⁴⁷ ECHR, art. 46 (4).

⁵⁴⁸ The Infringement Procedure of the European Court of Human Rights, European Court of Human Rights, Press Unit (June 2022).

⁵⁴⁹ Guide on Article 46 of the European Court of Human Rights, ¶ 33 (Aug. 31, 2024).

⁵⁵⁰ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶¶ 555-573, 650.

⁵⁵¹ Embarrassing for the Swiss Government: refusing to accept the European Court of Human Rights’ Climate Ruling, CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW, <https://www.ciel.org/news/switzerlands-refusal-of-european-court-of-human-rights-climate-ruling-an-embarrassment/> (last visited Jan 12, 2025).

⁵⁵² Başak Çalı, *Watch This Space: Executing Article 8 Compliant Climate Mitigation Legislation in Verein KlimaSeniorinnen v. Switzerland*, EJIL: TALK! (Jul. 15, 2024), <https://www.ejiltalk.org/watch-this-space-executing-article-8-compliant-climate-mitigation-legislation-in-verein-klimaseniorinnen-v-switzerland/> (last visited Jan 12, 2025).

boundaries.⁵⁵³ In its announcement on 28 August 2024, the Swiss Federal Council (SFC) criticised the judgment as a ‘broad interpretation’ of the Convention.⁵⁵⁴ It also stated that the Court did not consider the recent revision to the Swiss legislation on climate renewable energy and hence, expressed resistance to expanding the scope of the Convention.⁵⁵⁵

On October 9, 2024, the Swiss government submitted an action plan to the Committee of Ministers in response to the decision.⁵⁵⁶ The report expresses their intention to take limited measures to mitigate climate change, which does not fully execute the judgment.⁵⁵⁷ The response has been regarded as a demonstration of ‘a *lack of political will to align the country’s climate policies with established scientific consensus and with its legally binding duty to prevent foreseeable harm due to escalating climate change*’ by Sébastien Duyck, the Campaign Manager for Human Rights and Climate Change and Senior Attorney at Center for International Environmental Law (CIEL).⁵⁵⁸

Conversely, although the ECtHR decided the cases against France and Portugal inadmissible, the states are still taking measures to develop and implement policies to mitigate the effects of climate change. From November 4 to December 15, 2024, the French government initiated a public consultation with the third national low-carbon strategy (SNBC) and the third

⁵⁵³ Isabella Kaminski, *Strasbourg Court’s Swiss Climate Ruling Could Have Global Impact, Say Experts*, THE GUARDIAN, Apr. 13, 2024, <https://www.theguardian.com/law/2024/apr/13/swiss-climate-ruling-global-impact-european-court-human-rights> (last visited Jan 12, 2025).

⁵⁵⁴ Embarrassing for the Swiss Government, *supra* note 551; An ‘embarrassment’: Experts explain what could happen as Switzerland rejects landmark climate ruling, EURONEWS (10:04:40 +02:00). <https://www.euronews.com/green/2024/09/07/an-embarrassment-experts-explain-what-could-happen-as-switzerland-rejects-landmark-climate> (last visited Jan 12, 2025).

⁵⁵⁵ ECHR finds that State’s climate inaction breaches its human rights obligations, CLIFFORD CHANCE, <https://www.cliffordchance.com/content/cliffordchance/insights/resources/blogs/business-and-human-rights-insights/2024/10/the-european-court-of-human-rights-finds-that-states-climate-inaction-breaches-its-human-rights-obligations.html> (last visited Jan 12, 2025).

⁵⁵⁶ Switzerland’s Refusal to Fully Comply with Groundbreaking Climate Ruling Undermines the Country’s International Credentials, CENTER FOR INTERNATIONAL ENVIRONMENTAL LAW, <https://www.ciel.org/news/switzerland-refuse-to-fully-comply-with-climate-ruling/> (last visited Jan 12, 2025).

⁵⁵⁷ *Id.*

⁵⁵⁸ *Id.*

multiannual energy program (PPE) to address climate and energy policy.⁵⁵⁹ Both programs aim to achieve carbon neutrality by 2050.⁵⁶⁰ In 2024, France has also introduced its third National Climate Adaptation Plan (PNACC3), outlining 51 measures and over 200 actions to prepare the country for global warming of +2.7°C by 2050 and +4°C by 2100.⁵⁶¹ The plan aims to reduce vulnerabilities and provide benefits through a ‘no regret’ strategy by enhancing resilience against uncertainties.⁵⁶²

In October 2024, the Portuguese government also approved a set of measures in the Council of Ministers on Energy and Climate.⁵⁶³ It aims to boost the fight against climate change and accelerate the energy transition in Portugal.⁵⁶⁴ By revising the National Energy and Climate Plan (PNEC 2030), it plans to have 51% renewables in its final consumption by 2030 and cut GHG emissions by 55%.⁵⁶⁵ Portugal also set a climate agency to ‘ensure greater efficacy in implementing climate policy, ensuring planning, monitoring, and accountability.’⁵⁶⁶

More EU and non-EU countries are taking adaptation and mitigation measures to address climate change. Still, the question as to how the regional court may push the states to act concretely to address human rights violations from climate change through the adoption of international human rights law may exist. What the ECtHR can do is continue its judicial authority with effective interpretation of the issues in the climate context. The rest depends

⁵⁵⁹ Transport, housing, food, energy: Government sets new targets for reducing France’s greenhouse gas emissions, Nov. 5, 2024, https://www.lemonde.fr/en/environment/article/2024/11/05/transport-housing-food-energy-government-sets-new-targets-for-reducing-france-s-greenhouse-gas-emissions_6731637_114.html (last visited Jan 12, 2025).

⁵⁶⁰ *Id.*

⁵⁶¹ France unveils climate adaptation plan for a +4°C rise, IO (2024), <https://innovationorigins.com/en/france-unveils-climate-adaptation-plan-for-a-4c-rise/> (last visited Jan 12, 2025).

⁵⁶² *Id.*

⁵⁶³ Government approves ambitious package to accelerate energy transition and boost climate action, <https://www.portugal.gov.pt/en/gc24/communication/news-item?i=government-approves-ambitious-package-to-accelerate-the-energy-transition-and-strengthen-climate-act> (last visited Jan 12, 2025).

⁵⁶⁴ *Id.*

⁵⁶⁵ *Id.*

⁵⁶⁶ *Id.*

on the policymakers and judicial bodies of respective member states to incorporate that standard into their national law. This is already evident from the promulgation of new regulations and laws within the EU jurisdiction. From imposing a green tax to the target of zero emissions, to some extent, the transition toward a healed earth is ongoing.⁵⁶⁷ State and non-state actors are acknowledging the need for positive action.

5.3 Prospects for Future Cases

One of the major challenges faced by the applicants in climate cases is to prove the sufficient link between the harm caused to them and the alleged violation. The Court always opts for direct and sufficient evidence to prove the connection. Recent developments in climate science can point out that specific human-caused climate changes are likely to be highly influential in future cases.⁵⁶⁸ This would help with proving the state's failure to take necessary measures to mitigate global warming's effect. The issue of victim status will also be easy to substantiate in the presence of concrete scientific evidence. As the ECtHR has set the threshold quite high for individual victim status to show that their exposure was highly intense to the adverse effects of climate change to the point of requiring individual protection, future developments in climate science would assist in clarifying the legal obligations of the states.⁵⁶⁹ Moreover, the certain criteria set for association would inspire more applications in the future.

Scientific evidence has helped prove the sufficient link in environmental cases too. Depending on the scientific report, the Court granted victim status not only to the group of

⁵⁶⁷ Green Taxation - European Commission, https://taxation-customs.ec.europa.eu/green-taxation-0_en (last visited Nov 15, 2024).

⁵⁶⁸ Uhe, P., Otto, F. E., & Allen, M. R., *Attribution of Extreme Weather Events in the Context of Climate Change*, 7 *Nature Climate Change* 1 (2016).

⁵⁶⁹ The Role of Science in Climate Change Litigation, (2021), <https://www.biicl.org/blog/29/the-role-of-science-in-climate-change-litigation> (last visited Nov 15, 2024).

applicants but also to the entire population of an affected area.⁵⁷⁰ Although Article 34 does give a group of individuals the right to claim to be victims of violations, there have not been many instances where there were groups of applicants.⁵⁷¹ However, the stance in the environmental cases⁵⁷² indicates that the ECtHR is willing to acknowledge an entire group of individuals as victims.⁵⁷³ Since climate change's consequences are typically widespread and affect many individuals, this illustrates the potential for future cases to acknowledge groups claiming to be victims of climate change.

This can also lead to cases brought by communities who are vulnerable to the effects of climate change, as have been seen in the cases brought by the Inuit and Torres Strait indigenous communities in the USA and Australia.⁵⁷⁴ They can also bring the claim under Article 14 of the Convention alleging discrimination for being disproportionately affected by climate change due to the state's inability to take proper steps.⁵⁷⁵ Moreover, climate change may give rise to climate refugees who, in the face of denied asylum, might bring the state to court for violating their human rights. In the future, individuals or groups of individuals may bring allegations under Article 3 of the Convention if they are sent back to their country or denied refuge. This opens the possibility for further assessment of Article 3, the non-refoulment principle in the context of climate change for future applicants.

⁵⁷⁰ *Cordella and Others v. Italy*, App. Nos. 54414/13 and 54264/15; *Pavlov And Others v. Russia*, App. No. 31612/09; Antonio Mariconda, *Victim Status of Individuals in Climate Change Litigation before the ECtHR: Between Old Certainties and New Challenges*, 3 THE ITALIAN REVIEW OF INTERNATIONAL AND COMPARATIVE LAW 260, 275 (2023).

⁵⁷¹ Angela Hefti, *Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation*, TEL 1, 6–7 (2024), https://www.cambridge.org/core/product/identifier/S2047102524000128/type/journal_article (last visited Dec 3, 2024).

⁵⁷² See *Cordella and Others v. Italy*, App. Nos. 54414/13 and 54264/15; *Pavlov And Others v. Russia*, App. No. 31612/09, *Di Sarno v. Italy*, App. No. 30765/08, Eur. Ct. H. R. Judgment (2012).

⁵⁷³ Hefti, *supra* note 571.

⁵⁷⁴ *Sheila Watt-Cloutier v. United States, Billy and Others v Australia*.

⁵⁷⁵ Hefti, *supra* note 571.

The decision of the U.N. Human Rights Committee in *Teitiota* can be referred to where human rights violations were alleged by a climate refugee.⁵⁷⁶ How the committee has assessed the ‘real risk’ of the applicant in case of deportation is a great example to assess potential victimhood for the future ECtHR cases. Climate refugees may also take a similar approach before the ECtHR, and the Court may consider the approach of the committee for dealing with those cases. The Court may consider vulnerable groups to be potential victims of climate change.⁵⁷⁷ Although the Court did not examine potential victimhood in detail in the Swiss case, it is expected to be a major contentious issue in future climate cases. The Court might set some standards specifically for potential victims.

Generally, environmental organizations have been bringing cases to protect their members’ human rights in the environmental context, alleging violations. The standard set in the Swiss case for association applicants requires these organizations to have a ‘dedicated purpose’ aimed at protecting their members’ ‘human rights.’ This purpose can be ‘limited to or including collective action for protecting those rights against the threats arising from climate change.’⁵⁷⁸ However, this should not prevent associations or non-governmental organizations that are specifically concerned with the human rights of particular sections of society, especially children, women, the elderly, and the disabled from protecting them from climate threats. By appropriating the requirements properly, not only environmental associations but others would also be able to protect their members’ human rights in the future.

Furthermore, we have seen in the Swiss senior woman and Portuguese cases that the ECtHR has examined international and regional instruments as well as case laws from other jurisdictions.⁵⁷⁹ This is especially a positive comparative approach to examining the issue of climate change. The Court took a serious attitude toward dealing with human rights violations due to climate change. Although there are previous precedents on environmental cases, the Court felt the need for a novel interpretation approach, especially for climate context. It gives

⁵⁷⁶ *Teitiota v. New Zealand*.

⁵⁷⁷ Mariconda, *supra* note 570 at 278.

⁵⁷⁸ *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20 at ¶ 502.

⁵⁷⁹ *Id.* at ¶¶ 133-272.

hope to the future claimants. There is ample potential to have an adaptable approach to an issue by evolving case laws.

The same goes for climate litigations. Extensive comparative analysis, considering the decisions from other jurisdictions, would have a positive impact on the effective interpretation of the Convention. As has been observed in *Urgenda*⁵⁸⁰, *Klimaatzaak*,⁵⁸¹ and *Neubauer*,⁵⁸² domestic courts seem to be more flexible in deciding the victimhood/legal standing of the applicants. Whereas the domestic or regional courts are rigid in interpretation, the ECtHR has the option to recourse to the autonomous concept of independent interpretation for a flexible approach.

Moreover, climate change has a transboundary nature of effects.⁵⁸³ For this reason, the Court should be more flexible in interpreting the ‘special circumstances’ of extraterritorial jurisdiction. The ECtHR based its decision on the Swiss and Portuguese cases, comparing international and regional rules. Therefore, it can be expected that the Court’s guarded position may progress positively in responding to international trends. If the court implements flexible approaches, allowing the global and transboundary nature of climate change, future claimants may have greater success in debating extraterritorial responsibility.

⁵⁸⁰ *The State of the Netherlands v. Urgenda Foundation*, ECLI:NL: HR:2019:2007.

⁵⁸¹ *Klimaatzaak ASBL v. Belgium*, Case No. 2021/AR/1589.

⁵⁸² *Neubauer v. Germany*, Nos. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20.

⁵⁸³ We are all connected, UNDP, <https://www.undp.org/blog/we-are-all-connected> (last visited Nov 15, 2024).

Chapter 6

CONCLUSION

The issue of the climate crisis is no longer a myth. The gradual environmental degradation is affecting the entire world. The Secretary-General of the UN, António Guterres, has pointed out that ‘the climate emergency is a race we are losing, but it is a race we can win.’⁵⁸⁴ With the help of effective technology, net GHG emissions are reducible. Moreover, with assistance from the international community, including states, NGOs, international organizations, and private contributions, the situation may improve. However, this does not mean that overnight the problem will vanish. Rather, if nothing is done, adverse effects on our lives will worsen. In this context, every country must fulfil its positive obligation of protecting its citizens from disastrous adversities. Apart from legislation and effective implementation, litigation is another option for making the states take accountability.

Therefore, until the issue of climate change is effectively managed and mitigated, there will be litigants bringing allegations before the courts. As an intricately complex matter connecting human rights with environmental harm, climate litigation incorporates several disputable issues. This is true for all jurisdictions. The best way to address the issues is to incorporate international practice into domestic and regional jurisdiction and vice versa. However, the challenges in these cases revolve around the admissibility requirements and merits of each. As a cardinal rule for all jurisdictions, the application needs to fulfill the admissibility requirements to be examined on merit. This is especially important for substantiating the victimhood of the applicants in climate cases.

The main focus of this thesis has been to understand the criteria that determine the victim status of applicants before the European Court of Human Rights in climate change cases. This concept is novel before the court with only a handful of judgments delivered. It first

⁵⁸⁴ United Nations, *The Climate Crisis – A Race We Can Win*, UNITED NATIONS, <https://www.un.org/en/un75/climate-crisis-race-we-can-win> (last visited Nov 15, 2024).

examined the approaches of national jurisdictions where the victimhood criterion was inspected based on the national legislation and sometimes incorporating international human rights law. For example, the Belgium court incorporated the Aarhus Convention to broaden the interpretation of legal standing to associations, whereas the Irish Supreme Court stuck to its general rule.⁵⁸⁵ Where the constitution itself provided the right to a healthy environment, the applications made by individuals were comparatively successful.⁵⁸⁶

The Inuit petition⁵⁸⁷ at the IACoMHR established the link between climate change and human rights for the first time. Although the success rate at the IACoMHR is zero, the AO given by the IACtHR on the request of Chile and Colombia in 2023 is commendable.⁵⁸⁸ It recognized the right to a healthy environment as an autonomous right. The extraterritorial jurisdiction for climate issues holding a member state responsible for the violations outside its territory was also expanded. The New Zealand case before the Human Rights Committee under UN jurisdiction addressed the issue of climate refugees and the potential victimhood in case of deportation, which may protect the rights of asylum seekers in the future.⁵⁸⁹

However, the ECtHR interprets the applicants' victim status according to established principles. The ECtHR has established three types of victims who can claim victim status before the Court: direct victim, indirect victim, and potential victim. Under Article 34 of the ECHR, any natural person or group of persons or a legal entity, such as any non-governmental organization, can be classified as a victim. The ECtHR has required sufficient links of direct and personal effects on the applicants to claim direct victim status.⁵⁹⁰ It has admitted heirs and family members of the direct victims in cases they had personal or legal ties to in the court.⁵⁹¹ However, admitting potential victimhood, the ECtHR has acted

⁵⁸⁵ *Klimaatzaak ASBL v. Belgium*, Case No. 2021/AR/1589, *Friends of the Irish Environment CLG v. The Government of Ireland*, [2020] IESC 49, [2020] 3 I.R. 471.

⁵⁸⁶ *Neubauer v. Germany*, Nos. 1 BvR 2656/18, 1 BvR 78/20, 1 BvR 96/20, 1 BvR 288/20, *Held v. Montana*, No. BDV-2020-307.

⁵⁸⁷ *Sheila Watt-Cloutier v. United States*, Petition No. P-1413-05.

⁵⁸⁸ Advisory Opinion OC-23/17.

⁵⁸⁹ *Teitiota v. New Zealand*, U.N. Human Rights Committee, Comm. No. 2728/2016.

⁵⁹⁰ See *Klass and others v. Germany*, App. no. 5029/71.

⁵⁹¹ See *Vallianatos v. Greece*, App. Nos. 29381/09 and 32684/09.

cautiously so as not to violate the fundamental principle of *actio popularis* under the Convention. The ECtHR was quite flexible in environmental cases as long as the applicants could demonstrate that they are personally affected by the specific environmental harm.

Until the detailed judgment on the Swiss, French, and Portuguese cases this year, there was no established approach to how the ECtHR interprets victim status in climate crisis cases brought by the individual application system. The Swiss case has provided us with a set of regulations for both individual and association applicants in this matter. This judgment can be called the basis on which the future jurisprudence of climate change in the ECtHR will evolve. Legal scholars and practitioners have praised the high standards set for individual applicants and the more balanced requirements for association applicants. Although the critics are not delighted with certain aspects of the decisions, they have argued that this would provide clarity to the applicants on how to put their arguments in climate cases.⁵⁹² The ECtHR has long established the principle of interpreting the Convention in the present-day conditions. Thus, it is expected that the ECtHR will take a flexible approach to the effective interpretation of the Convention.

The thesis contributes to the growing field of climate change and human rights litigation, offering valuable insights as to how human rights bodies are addressing the intricate connection between environmental degradation and the violation of individual human rights. As the impacts of climate change are widespread, the ECtHR will also evolve to accommodate future claims. Although this research analyses the issue of victim status in climate change cases, further research may be conducted on each admissibility criterion before the ECtHR as to how they are interpreted in climate cases. There may be a comparative analysis of the requirements of an application with the national and other regional and international jurisdictions. This study also establishes that there is a need to align the law to the existing environmental changes as a way of responding to the challenges posed by climate change while at the same time protecting the rights of vulnerable groups.

⁵⁹² See Raible, *supra* note 506.

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